

JUDAISM

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CHILDREN OF MIXED MARRIAGES Are They Jewish?

A Symposium on Patrilineal Descent

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STATEMENT OF PURPOSE

In increasing measure, modern men are turning again to the quest for a worldview on the issues that are timeless—the meaning of life, the challenge of death, the purpose of suffering, the significance of the individual, his relation to society, and the goal of history. In order to advance this enterprise of spiritual discovery of our time this Journal has been projected. It will be primarily concerned with the philosophy, ethics, and religion of Judaism as a factor in the contemporary world . . .

We are committed to the proposition that Judaism has positive value today for Jews and for the world . . . At the same time, we disassociate ourselves from the dangerous tendency toward the hardening of party lines on the contemporary Jewish scene . . . The members of the Board of Editors belong to every school of Jewish life or to none. The trends popularly referred to as Orthodox, Conservatism, Reform, Reconstructionism, as well as others that as yet have no specific names, have their advocates among us, though no institution or movement is officially represented . . . Undoubtedly, our differences will find expression in these pages, but we shall be at one in opposing the dogmatism which takes for granted that one's own particular standpoint has a monopoly on truth and the authoritarianism which would suppress any contrary point of view.

Judaism will be dedicated to the quest for truth in the spirit of freedom. Our columns will be open to anyone who has something significant to say and the ability to say it well. New and unconventional interpretations, whatever their standpoint, will be welcomed from every source, for we share the conviction of the Talmud that "Both these and the others are the words of the living God." *From the introductory article by Robert Gordis, "Toward a Renaissance of Judaism" in Vol. I, No. 1.*

By Way of Introduction

ROBERT GORDIS

ACCORDING TO THE LAWS OF DESCENT MAINTAINED until recently by all branches of Judaism, a matrilineal principle prevailed in the case of a mixed marriage: if the father was Jewish and the mother was gentile, the child was regarded as gentile; if the father was gentile and the mother was Jewish, the child was regarded as Jewish.

Recently, the American Reform rabbinate, which had been anticipated by the Reconstructionists, voted to make a major modification in traditional law by adopting a patrilineal principle, so that the child of a gentile mother married to a Jewish father would also be regarded as Jewish. The decision aroused a passionate controversy in many quarters, particularly in those committed to traditional Halakhah.

Unfortunately, there has been relatively little serious discussion, either of the history of the principle, its validity from the standpoint of Jewish law, or its practical implications for the Jewish people today.

In accordance with the basic objective of JUDAISM to bring light rather than heat to bear upon important issues, we decided to publish a symposium on the newly proposed principle of patrilineal descent. Our task was facilitated by a fortunate circumstance. Professor Shaye J.D. Cohen, associate professor of Jewish History at the Jewish Theological Seminary, has done considerable research on the history of the patrilineal principle, in the course of which he has arrived at some new conclusions. He has prepared a brief paper, based on a more technical article, for our journal. It should be added that this paper is purely academic in character, and takes no position with regard to patrilineal descent, *lahalah khah ulema'aseh*, either in theory or in practice.

We proceeded to invite a distinguished group of Jewish scholars and leaders, representing all the various movements in Jewish life, to participate in the symposium which appears in this issue. Each contributor was free to address the purely scholarly aspects of the problem, to deal with the pragmatic implications or to do both. In some instances, the discussion takes the form of a comment and critique of Professor Cohen's presentation; in others, the writer treats the subject independently.

Because of the intense interest in the subject, virtually all those invited to participate did accept. I myself found the invitation irresistible, and am represented in the symposium. The collective wisdom and knowl-

edge that is presented here will be, I believe, an invaluable source for the intelligent and dispassionate consideration of this important subject. The significance of the issue may be gauged by the fact that the contributions pre-empted, and even exceeded, the limits of an entire issue and, as a result, the present one is larger than usual.

As readers will note, the contributors represent the various schools of thought — Orthodox, Conservative, Reconstructionist, Reform and secular. For all their differences, they are in agreement in their deep concern for the survival of Jews and the Jewish heritage.

We announce with sorrow the passing of Dr. Levi A. Olan, a distinguished rabbi and theologian, a leader in Reform Judaism and a contributing editor to JUDAISM, whose papers frequently graced the pages of our journal.

Yhi zikhro barukh.

The Matrilineal Principle in Historical Perspective

SHAYE J. D. COHEN

ACCORDING TO RABBINIC LAW, FROM THE second century of our era to the present, the offspring of a gentile mother and a Jewish father is a gentile, while the offspring of a Jewish mother and a gentile father is a Jew. Each of these two rulings has its own history, but it is convenient to group them together under the general heading *the matrilineal principle*. What is their origin? This is an immensely difficult question which is further complicated by its contemporary relevance. The matrilineal principle is at the center of the perennial Israeli debate on the topic "Who is a Jew?" The Reform movement has recently decided to adopt a "non-lineal" principle, according to which a child of a non-Jewish mother would be considered a Jew if raised as a Jew. In spite of the relevance of the topic, this essay focuses on history, not Halaka. Whether or not the matrilineal principle should be retained I leave for others to determine; my goal here is to determine the origins of the law and to provide some historical background to the contemporary debate.¹

The Mishnah

The central rabbinic text bearing on the matrilineal principle is Mishnah Qiddusin 3:12 (an explanation of all the technical terms in this Mishnah would swell this brief essay beyond reasonable length):

(A) Wherever there is potential for a valid marriage and the marriage would not be sinful, the offspring follows the male. And what is this? This is the daughter of a priest, Levite, or Israelite who was married to a priest, Levite, or Israelite.

(B) Wherever there is potential for a valid marriage but the marriage would be sinful, the offspring follows the parent of lower status. And what is this? This is a widow with a high priest, a divorcee or a 'released woman' (*halusa*, see Deut. 25:5-10) with a regular priest, a *mamzeret* or a *netina* (see Ezra 2:43-58, etc.) with an Israelite, an Israelite woman with a *mamzer* or a *natin*.

(C) And any woman who does not have the potential for a valid marriage with this man but has the potential for a valid marriage with other men, the offspring is a *mamzer*. And what is this? This is he who has intercourse with any of the relations prohibited by the Torah.

(D) And any woman who does not have the potential for a valid mar-

1. This essay is a capsule version of a long and detailed paper scheduled to appear in a forthcoming issue of the *Review of the Association of Jewish Studies*.

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riage either with this man or with other men, the offspring is like her. And what is this? This is the offspring of a slave woman or a gentile woman.

The Mishnah assumes that some marriages are valid and some invalid, and that the status of offspring is determined by the potential of the parents to contract a valid marriage with each other. Paragraph A treats unions which are permitted and potentially valid, B unions which are prohibited but potentially valid, and C and D unions which have no potential validity because they are prohibited. Legal paternity exists only if there exists the potential for a valid marriage between the father and mother. If the mother is legally incapable of contracting a valid marriage, her offspring lacks a legal father and follows its mother. Consequently, the offspring of a Jewish father and a Jewish mother follows the father (paragraph A, since legal paternity exists) while the offspring of a Jewish father and a slave or gentile mother follows the mother (paragraph D, since legal paternity does not exist). The logic of paragraphs B and C is somewhat different.

Mishnah Qiddusin 3:12 thus addresses one half of the matrilineal principle. In connection with a different issue, Mishnah Yebamot 7:5 addresses the other half of the matrilineal principle and assumes that the child of a Jewish mother and a gentile or slave father is a *mamzer*.² It is unclear whether this ruling is to be connected with paragraph D of Mishnah Qiddusin 3:12 (since the father lacks the capacity to contract a legal marriage, there is no paternity and the offspring follows the mother), paragraph C (since the mother is capable of contracting a valid marriage with other men but not with this man, the offspring is a *mamzer*), or with some other principle entirely. In any case, the Mishnah penalizes both a man and a woman for straying from the fold. A Jewish man who marries a gentile fathers a gentile; a Jewish woman who is married to a gentile bears a *mamzer*.

Both Mishnah Qiddusin 3:12 and Mishnah Yebamot 7:5 are anonymous, but their literary contexts suggest that each mishnah reflects the thought of the Yavnean period (circa 80-120 CE). The fact that the texts are anonymous implies that their editor, at least, regarded their rulings as beyond dispute. In the case of Mishnah Qiddusin 3:12 he was correct; no rabbi ever disputed the fact that the offspring of a gentile mother and a Jewish father follows the mother. In the case of Mishnah Yebamot 7:5 he was not correct. After a vigorous debate the Talmud reverses this Mishnah, insisting that the offspring of a Jewish mother and a gentile father is not a *mamzer* but a legitimate Jew. What motivated the Talmud to adopt this position is not known, but the Talmudic modification was

2. A *mamzer* is a male or female Jew (the feminine form of the noun is *mamzeret*) who is the offspring of a forbidden union (for example, adultery or incest) and is therefore prohibited from marrying a native born Jew; if he or she does, the children are *mamzerim*. Since the English terms "illegitimate" and "bastard" derive from a completely different legal system they do not accurately reflect the meaning of the Hebrew.

accepted by subsequent codifiers of Jewish law and remains in force to the present day. This dispute aside, both the Mishnah and the Talmud agree that the offspring is Jewish. Rabbinic literature preserves traces of non-matrilineal views, but the traces are few and insignificant.

Now we turn to the crucial questions: what are the origins of the matrilineal principle? Is it a rabbinic innovation of the first or second century, or was it already centuries old by the time it was codified in the Mishnah? With few exceptions, rabbinic family law is patrilineal. Status, kinship, and succession are determined through the father ("the family of the father is considered family, the family of the mother is not considered family"³). Why, then, did the rabbis adopt a matrilineal principle for the determination of the status of the offspring of mixed marriages?

It is not biblical

In biblical times the offspring of intermarriage was judged patrilineally. Numerous Israelite heroes and kings married foreign women; for example, Judah married a Canaanite, Joseph an Egyptian, Moses a Midianite and an Ethiopian, David a Philistine, and Solomon women of every description. By her marriage with an Israelite man a foreign woman joined the clan, people, and religion of her husband. It never occurred to anyone in pre-exilic times to argue that such marriages were null and void, that the foreign women must "convert" to Judaism,⁴ or that the offspring of the marriage were not Israelite if the women did not convert. In some circumstances biblical law and society did pay attention to maternal identity — the children of concubines and female slaves sometimes rank lower than the children of wives — but it never occurred to anyone to impose any legal or social disabilities on the children of foreign women.

Similarly, if an Israelite woman was married to a non-Israelite husband, she thereby joined his family and his people and was lost to the people of Israel. The Bible pays scant attention to such marriages, since it pays scant attention to Israelite women generally, but clearly implies that the offspring of Israelite women and foreign men were judged matrilineally only if the marriage was matrilocal, that is, only if the foreign husband joined the wife's domicile or clan.⁵ If the marriage was not matrilocal, that is, if the Israelite woman joined the house of her foreign husband, I assume that the fellow nationals of both the husband and the wife would have considered the children to be of the same nationality as their father.⁶

3. Babylonian Talmud *Baba Batra* 109b.

4. Conversion to Judaism did not yet exist; see Shaye J.D. Cohen, "Conversion to Judaism in Historical Perspective: From Biblical Israel to Post-Biblical Judaism," *Conservative Judaism* 36,4 (Summer 1983): 31-45.

5. See Lev. 24:10; 1 Chron. 2:17 (contrast 2 Sam. 17:25); and 1 Chron. 2:34-35.

6. 1 Kings 7:13-14, cf. 2 Chron. 2:12-13.

The Talmud, of course, is unaware of these developments, and attempts to find a basis in scripture for the rulings of the Mishnah. Deuteronomy 7:3-4 (“You shall not intermarry with them [the Canaanites]: do not give your daughter to his son or take his daughter for your son. For he will turn your son away from me to worship other gods.”) serves as the scriptural “hook” upon which to hang the matrilineal principle (“Your son from an Israelite [woman] is called ‘your son,’ but your son from a gentile woman is not called ‘your son’ but her son”). How the Talmud derives the matrilineal principle from these verses is not entirely clear,⁷ for the simple reason that the matrilineal principle is not to be found in these verses. It is not biblical.

It was not introduced by Ezra

After returning to Israel from Babylonia in 458 BCE (?), Ezra attempted to expel from the Jerusalem community approximately one hundred and thirteen foreign wives with their children (Ezra 9-10). Many scholars have argued that this episode proves that the matrilineal principle was introduced by Ezra. He attacked marriages between Israelite (at this period we can begin to say “Jewish”) men and foreign women because their consequences were serious; like their mothers, the offspring are not Jewish. In contrast, he could ignore (at least temporarily) the marriages between Jewish women and foreign men because their consequences were relatively benign; like their mothers, the offspring are Jewish.

This view *may* be correct, but it is not necessarily so; other explanations are possible. Perhaps Ezra ignored the marriages between native women and foreign men because, as I have just mentioned, such marriages are generally ignored by biblical texts. Ezra’s jurisdiction extended only to the members of his people, and he could do nothing to a foreign man who had married an Israelite woman. Even the attempted expulsion of the children of the foreign wives does not necessarily presume a matrilineal principle. Perhaps Ezra introduced a bi-lateral requirement for citizenship (Jewish identity requires two Jewish parents).

The likelihood that Ezra (or a contemporary) introduced the idea that the offspring of a Jewish father and a gentile mother is a gentile is further diminished by the fact that this half of the matrilineal principle is never attested explicitly, and is frequently contradicted implicitly, by the later literature of the second temple period. It is unknown to “the apocrypha,” “the pseudepigrapha,” the Qumran scrolls, Philo, Paul, Josephus, and the Acts of the Apostles. Some of these works are also unfamiliar with the other half of the matrilineal principle, the idea that the offspring of a Jewish mother and a gentile father is a Jew. Perhaps

7. See Rashi and Tosafot on Babylonian Talmud *Qiddushin* 68b; compare Palestinian Talmud *Qiddushin* 3:14 64d and Yebamot 2:6 4a.

later rabbis *deduced* the matrilineal principle from Ezra's actions, but that Ezra himself introduced the principle is unlikely.

It is not a relic of primitive times

Sixty years ago Victor Aptowitzer suggested that the matrilineal principle is a relic of primitive times when Israelite kinship was matrilineal and Israelite society was matriarchal. The thesis was supported by the discovery in both the Bible and the Talmud of numerous other such "relics" of primitive matriliney and matriarchy.⁸

This suggestion is not convincing because Aptowitzer confuses *matriliney* (determination of kinship through females) with *matriarchy* (rule by females), a social form which never existed. Whether ancient Israelite society was ever matrilineal, I leave for others to determine, but the alleged relics of that alleged society collected by Aptowitzer are, for the most part, trivial or debatable. Furthermore, relics which are nowhere attested in the Bible and post-Biblical Jewish literature but which surface miraculously in rabbinic texts a millenium or two after the period of their origins — these are remarkable relics indeed. Perhaps a methodologically sophisticated study of rabbinic family law and kinship patterns will reveal traces of a matrilineal society, but in the absence of such a study, Aptowitzer's suggestion is unconvincing.

Rape and intermarriage

It has been suggested that many Jewish women were raped by Roman soldiers during the wars of 66-70 and 132-135 C.E., and that the rabbis, out of pity for their plight, declared the resulting offspring to be Jewish, not gentile. The quality of this suggestion befits the obscurity of its origins, because, according to the Mishnah (see above), the offspring of a Jewish mother and a gentile father is a *mamzer*, and telling an unfortunate woman who has been raped that she is about to bear a *mamzer* is only slightly more consolatory than telling her that she is about to bear a gentile. In some respects it is less consolatory: a gentile, at least, can convert to Judaism, but a *mamzer* can never be legitimated.

Further, why declare the offspring of a Jewish father and a gentile mother to be a gentile? If the point of this half of the matrilineal principle was to discourage intermarriage by Jewish men, there seems to have been little need for such legislation. Perhaps in first-century Rome and Alexandria intermarriage between Jews and gentiles was not uncommon, but it certainly was uncommon in first century Judea and in rabbinic society generally throughout the following centuries. And if the primary motivation was to restrain intermarriage, the rabbis should have intro-

8. Victor Aptowitzer, "Spuren des Matriarchats im juedischen Schrifttum," *Hebrew Union College Annual* 4 (1925): 207-240 and 5 (1926): 261-297.

duced a bi-lateral requirement for citizenship, just as Ezra did (perhaps) in Jerusalem (see above).

The uncertainty of paternity and the intimacy of motherhood

Some have suggested that the principle is based on the old idea *mater certa, pater incertus*. The identity of a mother is always knowable, but the identity of a father is never knowable; if a woman is married, the law presumes that her husband is the father of her child, but this presumption always lacks certainty. Perhaps the rabbis, too, believed that paternity was always unknowable and felt that a child's identity should be determined in the first instance by its mother and not by its putative father. Hence the matrilineal principle. This suggestion fails for two reasons. First, as I remarked above, the rabbis restricted the matrilineal principle for cases of intermarriage, but paternity is no more uncertain in those marriages than it is in unions between Jews. Second, the rabbis did not always require marriage between the father and the mother for the offspring to inherit the father or receive his status. If an unmarried woman is pregnant and declares that the father of her child is a priest, R. Gamaliel and R. Eliezer say that she is to be believed; if a woman becomes pregnant as the result of rape, the offspring is presumed to have the same status as the majority of the people where the rape occurred (Mishnah Ketubot 1:9-10). In these cases paternity is very uncertain, but the rabbis did not judge the offspring matrilineally.

Instead of emphasizing the uncertainty of paternity, some have suggested that the matrilineal principle is the result of the natural closeness between mother and child. The offspring of a gentile mother and a Jewish father is a gentile because the intimate connection between a mother and her child makes it certain that she will influence him and instruct him in the ways of the gentiles. This suggestion, too, is unconvincing. The ancients, both Jewish and gentile, recognized the intimacy of motherhood, but they did not draw any legal inferences from this intimacy. Indeed, it was not until the nineteenth century that the legal systems of Europe began to recognize the legal rights of a mother to her children. According to rabbinic law a child must honor both his mother and his father, but only the father is legally responsible for raising the children. A mother's obligation to tend to her children is reckoned as one of her obligations to her husband, since it is he who is responsible for their care.

Two proposed solutions

Although I have failed to discover a definitive solution to our question, I offer two suggestions which are more plausible than those so far considered. These two suggestions share two assumptions. First, the matrilineal principle is a legal innovation of the first or second century of

our era, i.e., that the origins of the principle are to be sought in the period roughly contemporary with its earliest attestation. Second, the principle was introduced not in response to societal need but as a consequence of the influx of new ideas into rabbinic Judaism.

Roman law

According to Roman law, a child is the legal heir, and is in the custody, of his father only if his father and mother were joined in a legal marriage (*justum matrimonium*). The capacity to contract a legal marriage was called *conubium* (also spelled *connubium*), and was possessed almost exclusively by Roman citizens. Marriage between a person with *conubium* and a person without *conubium* was valid, but it was not a *justum matrimonium*; and without a *justum matrimonium*, the status of the child follows that of its mother. Consequently, if a Roman citizen marries a non-citizen woman, the children are non-citizens. If a Roman citizen has intercourse with a slave woman, the children are slaves. According to the legal theory, if a Roman matron marries a non-citizen, the children are citizens, except that the *Lex Minicia*, a law probably enacted during the first century BCE, declared that the children of such unions follow the parent with the lower status, that is, the children follow the father. Similarly, the children of a Roman matron by a slave ought to be, according to the theory, free citizens like their mother, except that a law, enacted under Claudius, declared that they are slaves.⁹

The conceptual similarity between the Roman and the rabbinic systems is striking. Marriages between citizens produce children whose status is determined patrilineally. Marriages between citizens and non-citizens produce children whose status, in theory at least, is determined matrilineally; but both legal systems tried to equalize the consequences for male and female citizens who stray from the fold. A Roman matron impregnated by a non-citizen or a slave bears a non-citizen or slave, not a citizen; a Jewish woman impregnated by a gentile or a slave bears a *mamzer*, a citizen of impaired status.

Although it is generally very difficult to prove the influence of one legal system upon another, here the evidence is rather strong. The Roman law, whose principles are clearly attested in republican times, antedates the earliest attestation of the rabbinic law. This suggestion accounts for the phraseology of the Mishnah as well as its dominant ideas. It takes seriously the Mishnah's explanation of itself, since the Mishnah's notion of "potential to contract a valid marriage" seems to reflect the Roman notion of *conubium*. It also is economical, since it accounts at once for both halves of the matrilineal principle. Perhaps, then, the matrilineal principle entered rabbinic Judaism from Roman law.¹⁰

9. For a readable introduction to the Roman legislation see John Crook, *Law and Life of Rome* (Ithaca: Cornell, 1967), pp. 36-68 ("The Law of Status"), esp. pp. 40-41.

A full assessment of this suggestion must await a detailed study of other possible influences of Roman ideas and institutions upon ancient Judaism. If the matrilineal principle can be shown to be but one of the many legacies of Rome to Jerusalem, the suggestion will gain force. This study will also have to address several difficult questions. How did the rabbis learn the principles of the Roman law of status? Surely not from the study of Roman law books. How, then? Why did they allow themselves to draw on Roman wisdom when hatred of Rome was so widespread in Judean society, even among those opposed to war with Rome? These questions are analogous to those which must be asked in any study of rabbinic "Hellenism" and the answers remain elusive.

Forbidden mixtures

My second suggestion sees the matrilineal principle not as the result of external influence but as an organic part of rabbinic thought. The Mishnah's treatment of the consequences of intermarriage should be juxtaposed to its discussion of the results of mixed breeding in the animal kingdom. Scripture prohibits the breeding of animals of different species (Leviticus 19:19), but if the prohibition is violated, what is the status of the resulting offspring? Does it belong to the species of the father or the species of the mother? Or is it a new species altogether? In the *Tosepta* the sages argue that a mule is neither a horse nor a donkey, but a new and distinct species. It makes no difference whether the mule's mother is a horse or a donkey; a mule is a mule.¹¹ The Mishnah, however, seems to ignore this opinion in favor of that of R. Judah who seems to say that a mule whose mother is a horse and whose father is a donkey is permitted to mate not only with other such mules but even with pure-bred horses, since a mule follows the status of its mother (Mishnah *Kilayim* 8:4). If this interpretation is correct, the offspring yielded by the mixed breeding both of animals and of humans is judged matrilineally. The offspring of a gentile mother and a Jewish father belongs to the species of its mother, just as a mule, in R. Judah's view, belongs to the species of its mother. The offspring of a Jewish mother and a gentile father is a Jew but (according to the Mishnah) a *mamzer*, just as a mule, in the sages' view, cannot mate with the kind of either its father or its mother. Even if we reject this interpretation of the debate between the sages and R. Judah,¹² the laws of *kilayim*, prohibited mixtures, provide an ideological context for the matrilineal principle. Jacob Neusner has well demonstrated the Mishnah's deep and abiding fascination with mixtures and with creatures which, like hermaphrodites, Samaritans, and the land of Syria, defy simple classifica-

10. This thesis was first proposed by Louis M. Epstein, *Marriage Laws in the Bible and the Talmud* (Cambridge: Harvard University, 1942), pp. 174 and 194-197.

11. *Tosepta Kilayim* 5:5, p. 222, ed. Lieberman.

12. It is rejected by the Babylonian Talmud *Hulin* 78b-79a.

tion.¹³ The offspring of intermarriage was a conceptual problem which required a solution.

Conclusions

The transition from biblical patriliney to mishnaic matriliney cannot be dated before the period of the Mishnah itself. In all likelihood the transition was occasioned by the influx of Roman ideas and by the growth of the rabbinic interest in mixtures of all sorts. The transition was also facilitated by the emergence, in the first century BCE and the first century CE, of the idea that a gentile woman “converted” to Judaism not through marriage with a Jewish husband (as was the practice in biblical times) but through a separate ritual (immersion in water). The matrilineal principle presumes that the Jewishness of a woman born a gentile can be determined without reference to her Jewish husband. If she converts to Judaism, her children are Jewish; if she does not, they are gentiles. There is no evidence that the matrilineal principle was introduced in response to any particular social need.

Does this reconstruction have implications for contemporary practice? Does it strengthen the hand of those who wish to reject or reform the matrilineal principle of contemporary Halaka? I am not speaking to those fundamentalists who believe that all of rabbinic law was revealed to Moses at Mount Sinai, because they, in principle, oppose both historical scholarship and halakic reforms. I am speaking to those who accept, as I do, a modern, historical approach to Jewish tradition. Does my analysis have Halakic implications?

The answer is no. Jewish law, like other legal systems, is based on precedent, and what the historian can contribute to Halaka is the collection of precedents and the analysis of legal history. But history and Halaka are autonomous disciplines, each with its own methods, assumptions, and goals, and the historian cannot tell the jurist which precedent to follow or which decision to adopt. The modern jurist will, of course, consider the data provided by the historian, the sociologist, the economist, the politician, etc., but it is the jurist who makes the decision, and he makes his decision in accordance with his own legal philosophy. In its interpretation of the Constitution the Supreme Court considers, but is not bound by, the original meaning of the document in its 18th century context. The jurist seeks to determine the law, the historian seeks to determine the truth. The two need not coincide.

13. Jacob Neusner, *Judaism: the Evidence of the Mishnah* (Chicago: University of Chicago, 1981), pp. 256-270.

The Patrilineal Principle: The Crucial Concern

J. DAVID BLEICH

IT IS CERTAINLY NO SECRET THAT THE RESOLUTION adopted by the CCAR accepting the principle of patrilineal identity was predicated upon sociological and institutional concerns rather than upon either historical or halakhic considerations. Nevertheless, in the wake of that resolution, there has been considerable effort to provide *post factum* justification for that principle. In a fundamental sense, the effort is an exercise in futility since even were historical and/or rabbinic sources uncovered which would support that position they would be essentially irrelevant insofar as normative Jewish law is concerned. The rule establishing identity as a Jew on the basis of matrilineal succession is unequivocally established by the Gemara, *Kiddushin* 68b, and is accepted by all codifiers of Jewish law. It is highly unlikely that in any legal system a basic principle of law based upon precedents dating from antiquity and reaffirmed so frequently and so authoritatively would be reversed by judicial process.

There was, to be sure, one talmudic Sage who did, on one occasion, advocate that patrilineal succession be adopted as the norm. But even he reversed his opinion. The following discussion appears in the Palestinian Talmud, *Kiddushin* 3:12:

Jacob of the city of Naburaya went to Tyre. They came and asked him "what [is the law with regard to] circumcising the son of a gentile woman [born of a Jewish father] on the Sabbath?" [Jacob] thought to permit them [to do so on the basis of this [verse]: "And they declared their pedigrees after their families, by their fathers' houses" (Numbers 1:18). R. Haggi heard [and] said, "Let him come and be flogged." [Jacob] said to [R. Haggi], "On what basis do you flog me?" [R. Haggi] said to him, "From this [verse]: 'And now let us make a covenant to put away all the foreign wives and such as are born of them' (Ezra 10:3)." [Jacob] said to [R. Haggi], "And would you flog me on the basis of the [prophetic] tradition?" [R. Haggi] said to him, "... and let it be done according to the Torah' (Ezra 10:3)." [Jacob] said to [R. Haggi], "From which law?" [R. Haggi] said to him, "From that which R. Yohanan declared in the name of R. Simeon ben Yohai, 'Thou shalt not make marriage with them [...] nor his daughter shalt thou take unto thy son. For he will turn thy son from following Me, that they may serve other gods.' (Deuteronomy 7:3-4)." [Jacob] said to R. Haggi, "Flog me with your lashes for that is better than death."

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Rabbinic exegesis regards the phrase “For he will turn thy son from following Me” as descriptive rather than predictive. The verse serves to establish a legal principle rather than as a biblical prognostication. The child of a Jewish male born of the daughter of a gentile is *ipso facto* turned from “following Me” because his status is that of a gentile who is not obliged to serve God by observing the commandments of the Torah. This interpretation is not simply an Oral Law tradition recorded by the Sages of Talmud; it was known to, and accepted by, Ezra. In demanding that children of such unions be excluded from the Jewish faith-community Ezra declared, “And let it be done according to the Torah.” Clearly, Ezra recognized the principle of matrilineal identity as being firmly rooted in the verses of the Pentateuch. It is noteworthy that when this was pointed out to Jacob of Naboraya he candidly conceded the argument and expressed relief at being preserved from causing others to accept an errant view and to commit the serious transgression involved in the circumcision of a gentile child on the Sabbath. A similar narrative, identical in all salient points, is found in *Midrash Rabbah*, Numbers 19:3.

The doctrine of matrilineal succession and the exclusion of the principle of patrilineal identity as a sufficient criterion of Jewish identity is Sinaitic in origin. Whether or not, historically, a different principle pertained prior to the Sinaitic covenant is entirely irrelevant. Insofar as the community of Israel is concerned, innumerable provisions of the Noa-hide Code which were binding upon all people prior to Sinai were supplanted by the Sinaitic covenant. With regard to the giving of the Torah at Mount Sinai, Scripture declares, “This day thou art become a people unto the Lord thy God” (Deuteronomy 27:9). Prior to Sinai there existed no community of Israel. Even as the concept of the peoplehood of Israel and the sanctity of Israel date from Sinai, so also are the criteria of membership in the community of Israel prescribed by the covenant entered into at Sinai.

The resolution adopted by the CCAR contains a further provision which has a far stronger basis in Jewish law. The resolution grants recognition as a Jew to the progeny of an intermarriage only if the child is reared as a member of the Jewish faith. There is some precedent for the position that even the child of a Jewish mother and a gentile father is regarded as a Jew only if the child conducts himself as a Jew.

From the purely scholarly perspective, it is intriguing to note that a number of halakhic authorities maintain that, even according to the accepted view that the child of a Jewish mother and a non-Jewish father is deemed to be a Jew of legitimate birth, the Jewishness of the mother does not, in and of itself, automatically guarantee that the child is to be deemed a Jew in the eyes of Halakhah. These authorities adopt a most unusual stance. They maintain that in cases in which the father is a non-Jew the child is accorded the status of a Jew only if he “conducts himself as a Jew;” otherwise, he is deemed to be a non-Jew. In effect, the child of a Jewish

mother and a non-Jewish father may elect to acquire the halakhic status of a Jew and is deemed to have done so if he is raised as a Jew and conducts himself accordingly. If the child is raised as a Jew he is not required to undergo a conversion ceremony, as is the case with the issue of a union between a Jewish man and a non-Jewish woman. However, according to this view, the child of a Jewish mother and a non-Jewish father who is not raised as a Jew is deemed to have renounced his option to acquire the status of a Jew by virtue of birth and would subsequently require a formal conversion ceremony to be considered a Jew. Here, according to these authorities, is an isolated instance in which birth does not confer automatic status as a Jew, but merely provides the option for acquiring Jewish identity. This anomalous thesis is advanced by the sixteenth-century authority, R. Shlomo Luria (Maharshal), in his commentary on *Yevamot* 16b. A view similar to that advanced by Maharshal is formulated in greater detail by Rit Algazi in his commentary on *Bekhorot* 47a.

Maharsha, *Yevamot* 16b, sharply contests Maharshal's view and advances the obvious argument that, axiomatically, matters of personal status are contingent upon parentage alone and cannot be prejudiced by subsequent deportment; a change in status can be effected only by means of formal conversion.

Indeed, the overwhelming majority of halakhic authorities including *Pithei Teshuvah*, *Yoreh De'ah* 266:14; *Hemdat Shlomo*, *Even ha-Ezer*, no. 3; *Aznei Nezer*, *Even ha-Ezer*, I, no. 16; *Maharam Schick*, *Even ha-Ezer*, no. 20; *Nahal Eshkol*, III, p. 133; as well as *Dovev Mesharim*, I, no. 7, clearly and definitively rule that the child of a Jewish mother and a non-Jewish father is, in all instances, deemed to be a Jew.

Adoption by the Reform movement of the position that a child of a mixed marriage is to be considered a member of the Jewish faith-community only if reared as a Jew is not only incorrect as a normative principle of Jewish law but, when coupled with adoption of the principle of patrilineal succession, this innovation raises serious questions with regard to why it is at all necessary for that movement to adopt a policy of patrilineal succession and with regard to what is, indeed, the underlying motivation.

The Reform movement has long since renounced *milah* and *tevilah* as the *sine qua non* of conversion and, in essence, asks for little more than a declaration affirming a desire to become a member of the community of Israel. Since, from the Reform perspective, a child born of two gentile parents and a child born of a Jewish father and a non-Jewish mother are both required to affirm their Jewishness in a positive matter and need do nothing more to be accepted as Jews, why, then, the need for a principle of patrilineal succession? Since, in both cases, such affirmation is required, what practical difference is there whether the person is accorded status as a Jew by virtue of birth or by virtue of conversion?

Precisely the same question may be raised with regard to the vehe-

ment disapproval which adoption of this policy has aroused in Orthodox circles. Heretofore, within the Reform movement, children of a Jewish father and a non-Jewish mother were routinely accepted as converts to Judaism. Those conversions, however, were never regarded by adherents of normative Judaism as valid in the eyes of Jewish law.

Halakhic Judaism can never sanction conversion in the absence of either ideological sincerity or of unreserved acceptance of the "yoke of the commandments." Thus, no candidate may be accepted for conversion in the absence of a firm commitment to *shmirat ha-mitzvot*. Sincerity of purpose in the face of obvious ulterior motivation can be determined only by a competent *Bet Din* on a case-by-case basis.

Moreover, Halakhah recognizes the validity of a conversion only if performed in the presence of a qualified *Bet Din*. The requirements for serving on such a *Bet Din* are carefully spelled out by Halakhah. Conversion, even when accompanied by circumcision, immersion in a *mikveh* and acceptance of the "yoke of the commandments," is null and void unless performed in the presence of a qualified *Bet Din*.

In both the United States and in Israel — as in most countries — a judge cannot sit on the bench without first being sworn to uphold the laws of the land. In the absence of such a commitment his judicial decisions are legally meaningless — regardless of whether or not they reflect the law correctly. Jewish law does not require an oath — other than the one sworn by each of us at Mount Sinai — but it does state clear requirements for holding judicial office. One need not necessarily be an ordained rabbi in order to serve on a *Bet Din* for purposes of accepting a convert, but one must be committed to the acceptance of Torah — both the Written and Oral Law — *in its entirety*. One who refuses to accept the divinity and binding authority of even the most minor detail of Halakhah is, *ipso facto*, disqualified. It has long been the stated opinion of halakhic authorities that ideological adherents of Reform and Conservatism fall into this category. One of the foremost rabbinic scholars of our generation, R. Moses Feinstein, has written in at least six different responsa which appear in his *Iggerot Mosheh* that all who identify themselves as non-Orthodox clergy must be considered to be in this category. There is nothing in this position which should be a cause for animus directed against the Orthodox rabbinate. The Orthodox posture on this matter is based upon objective criteria of Jewish law and in no way reflects political, partisan or personal considerations. Those who differ ideologically may disagree, and even deplore, this position; but intellectual honesty should compel them to recognize that it is a sincerely held view which is the product of a firm commitment to Halakhah in all its guises.

The selfsame persons now claiming recognition as Jews on the basis of patrilineal succession were heretofore routinely accepted as converts by the Reform movement. The claim of such individuals to identify as Jews on the basis of conversion had no greater validity in the eyes of nor-

mative Judaism than does their claim to Jewishness by virtue of patrilineal succession. Why, then, the current furor?

To be sure, the number of individuals who will be regarded as Jews in some circles by virtue of the patrilineal principle is bound to rise at least marginally since not all such persons would otherwise undergo Reform conversion. Certainly, recognition as Jews accorded by the Reform movement to individuals who are regarded by normative Judaism as non-Jews will create difficulties in relation to future possible marriages between adherents of normative Judaism and the progeny of Reform Jews. But such concerns already exist. Indeed, it is the concern that all persons accepted as Jews be able freely to enter into marriage with one another — and not unseemly institutional jealousies — which is the basis of the demand that only conversions which are valid in the eyes of Halakhah be accepted by the State of Israel for purposes of the Law of Return.

Certainly no one wishes a schism to occur between adherents of normative Judaism and adherents of the Reform movement similar to that which occurred in days gone by between the Karaites and the Rabbanites. However, the schism occurred, not because of invalid conversions performed by the Karaite community, but because of their disregard for essential provisions of Jewish law in the execution of a *get*. There is no remedy which would permit the progeny of a woman who has contracted a second marriage without benefit of a valid *get* to marry Jews of legitimate birth. The Reform movement has similarly rejected the requirement for a religious divorce as a necessary condition of remarriage and, for that reason, the spectre of a modern-day schism has, indeed, arisen. The threat to genealogical purity which existed only in an incipient form in the early days of the Reform movement prompted personages such as R. Moses Sofer, *Teshuvot Hatam Sofer*, VI, no. 89, and, much later, R. Chaim Ozer Grodzinski, *Ahi'ezer: Kovez Iggerot*, I, no. 150, to propose a call for such a schism.

Such a schism has not occurred — but for reasons which can give heart to no one. There have, indeed, been cases involving children of such marriages who have contemplated marriage with observant Jews only to discover that they were born of an adulterous union and, hence, their contemplated marriages are precluded by Jewish law. With the growing number of *ba'alei teshuvah* and children drawn from all sectors of the Jewish community enrolled in Day Schools and *yeshivot*, the incidence of such heartrending tragedies is increasing. But a formal schism has been averted only because it is still possible to investigate the genealogy of descendants of Reform Jews in order to determine that there exists no barrier to marriage. Unfortunately, there are very few Reform Jews who identify themselves as Jews beyond the third or, perhaps, the fourth generation. The Karaite community maintained its own identity and observances over a period of centuries so that, with the passing of time, genealogical investigation became impossible. Unfortunately, the ravages of

assimilation have thus far made that issue academic insofar as the Reform community is concerned. Little comfort may be found in the fact that a schism has been avoided only because of the unhappy phenomenon of assimilation.

If abolition of the *get* did not lead to a schism, *a fortiori*, the issue of patrilineal identity should not lead to such sorrowful consequences. Certainly, invalid conversions have not lead to a schism. The remedy of undergoing a valid conversion remains readily available.

The crucial concern in the present controversy is of a different nature entirely. Adoption of the policy of patrilineal succession, coupled with formal affirmation of Jewish identity, is manifestly unnecessary for a movement which accepts conversion on the basis of such a declaration alone. The Reform movement can persist in accepting a policy of patrilineal succession as a sufficient criterion of Jewish identity only if such a policy is born of a determination to flout two thousand years of Jewish tradition. That is tantamount to renunciation of the already tenuous ties which bind Reform Jews to other members of the Jewish faith-community. Adoption of the patrilineal principle is an eloquent statement of disassociation. In light of the existing policy regarding conversion, adoption of the principle of patrilineal identity may well be only a matter of form. But, at times, form becomes substance. It is precisely this flagrant disregard of the elemental formal ties which unite all Jews which has aroused the concern of Jews who cherish their separated brethren and recoil at the prospect of further alienation and divisiveness.

Sectors of our community so separated in matters of theology and observance have heretofore remained united in terms of basic identity and identification. That is a precious heritage which no observant Jew seeks to put asunder. But, as Ezra proclaimed centuries ago, if a common Jewish identity is to continue to be acknowledged by all, "*ve-kha-Torah ye'aseh*," it must, of necessity, be on the basis of the identity demanded by the Torah itself.

Toward a Reasonable Future for the Jewish People

JACK J. COHEN

HARRY A. WOLFSON CREDITS PHILO WITH having provided a new conception of Jewish nationality: the Jews constituted “a nation which transcends race and local citizenship.”¹ By defining the Jewish people in terms of religion or culture, rather than “in terms of race or territory or political government,” Philo thereby viewed native-born Jews as constituting a nation in both these senses, whereas proselytes would henceforth also be part of the Jewish nation but in the religio-cultural sense.

Philo sought an answer to the problem of national unity which had arisen two millenia ago as a result of the scattering of the Jews and of the addition of proselytes. He saw that unity in two factors: one, the “common racial origin” of the Jews which constituted their national base; and two, “their common religion,”² which made of them a “universal polity” or a “divine ecclesia.” Thus, Jewish communities, however dispersed, were, in this conception, able to remain united by “a common law, a common form of organized life and a common way of living.”

The problem of common racial origin among Jews has been difficult from the very outset of recorded Jewish history. Clearly, the discouragement of racial mixture, whenever it was felt necessary in biblical times, involved considerations of religio-cultural loyalty rather than concern about the biological purity of the Hebrews and Israelites. Apparently, the tendency toward racial isolation increased in intensity as the culture and religion of the Jews became more distinctive and as the sense of Jewish identity demanded a greater degree of conscious commitment to historically evolved group norms. Nonetheless, there was never a total absence of either defections from Jewish ranks or of absorption of outsiders. The biblical norm of absorption had, as Shaye Cohen has indicated, nothing to do with formal conversion. But, with the advent of Rabbinic Judaism, the question of the terms under which outsiders and the children of mixed unions were to be accepted into the Jewish people became a lively issue.

Prof. Cohen has put the problem in its proper light. By demonstra-

1. *Philo*, (Cambridge, Mass.: Harvard University Press, 1948) vol. 2, p. 401.

2. *Ibid.*, p. 400.

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ting not only the difficulty which scholars have in delineating the exact process which led the sages to decide on the matrilineal principle and the reasoning which led them to that conclusion, but, also, by indicating that even an accurate historical assessment of the emergence of the principle cannot, of itself, dictate the path we must follow today, Cohen forces us to answer anew the problem that bothered Philo and the Tannaim. I should like to take up the challenge, albeit in brief schematic form:

1. There are a number of propositions on which, I hope, traditional, halakhic-minded Jews and the proponents of equal acceptance of the matrilineal and patrilineal principles can agree.

a) *Intermarriage*³ is an inevitable concomitant of freedom and the open, pluralistic society. It cannot be prevented by legislation.

b) Excessive *mixed marriage*⁴ constitutes a danger to the quality of Jewish religion and culture, and its severity is matched only by increased internal deculturation. The latter is both a cause and a consequence of mixed marriage.

c) The main remedy to mixed marriage, as it is to deculturation among native-born Jews, is to improve the quality of Jewish education and of Jewish life in general.

d) Intermarriages, in which the non-Jewish partner converts to Judaism, are to be viewed as opening the possibility of adding strength to the Jewish people, and every step should be taken by both Jewish authorities and lay people to make such couples feel wanted as Jews.

e) In the case of a mixed marriage in which the Jewish partner indicates a desire to bring offspring into the Jewish fold, encouragement should be offered even when the offspring, as in the case of the child of a non-Jewish mother, might not be considered halakhically Jewish. From the standpoint of halakhic loyalists, the possibility is always present that, by presenting Judaism favorably and profoundly to the non-Jewish partner and to the children, they will opt for Judaism. It should be evident that the Jewish commitment even of the children of Jewish mothers married to non-Jews will be largely conditioned by the family and communal environment to which they are subjected, so that their identification by the halakhah as Jews is a formality which might have no relevance whatsoever for their involvement in the fate and faith of the Jewish people. On the other hand, where a Jewish father has a strong desire to raise his children as Jews and has the tacit or active approval of his non-Jewish wife, even halakhic-oriented Jews should wish to encourage the eventual agreement of the children (and possibly the wife, as well,) to undergo the formal process of conversion.

3. I use intermarriage in the sense of a union between a native Jew and a non-Jew, in which one of the parties converts to the religion of the other.

4. A mixed marriage is one in which both husband and wife retain their original allegiances, however strong or weak the case may be.

2. It seems evident that, for the foreseeable future, the Jewish people will continue to be divided on the most fundamental elements of Jewish identity. Despite the logic of Mordecai M. Kaplan's insistence on the necessity to formulate a revised covenant that would reckon with the need for Jewish unity in diversity, it is unlikely that agreement can be reached between those who adhere to halakhic methods of decision-making and those who prefer one or another form of the democratic process. Until the halakhists are prepared to reinterpret Jewish law to include compromise as an indispensable instrument of social engineering, and until secularist-minded Jews can be induced to appreciate the virtues of much of the content of the halakhic tradition, the gap between the two ends of the Jewish spectrum will remain unbridgeable.

3. Up to recent times, the majority of leaders in the non-Orthodox trends in Judaism have compromised on the subject of patrilineal/matrilineal descent, but their willingness to do so for the sake of preserving Jewish unity has failed to produce the hoped-for results — either the recognition of their status by the halakhic establishment or, more important, the prevention of mixed marriages. Evidently, the forces of active and passive assimilation and deculturation have weakened traditional Jewish law as an instrument for the preservation of Jewish continuity. In many instances, it has become a stumbling-block in the way of Jewish survival. That is the case when the halakhah, which, by its very nature, is voluntary, advances ideas and practices that violate the highest moral and intellectual convictions of a large — and, probably, a majority — section of the Jewish people. Only in Israel, where the halakhah is (improperly) propped up by the secular government, has it been possible to enforce halakhic standards of personal status, at the sacrifice of standards of probity and human decency and at the risk of alienating large sections of the coming generations.

4. The decisions of the Reform and Reconstructionist movements to recognize partilineal descent provide a proper internal Jewish response to the current reality of our people. The decisions were bound to elicit bitter responses, but all the bitterness in the world cannot set aside the basic correctness of the thought behind these decisions. It might be argued that the actions are improperly timed or that they should not have been made unilaterally. But those who criticize the two movements in these terms would be in a better position to do so if they were ready to engage in dialogue leading to some form of compromise agreement. In the absence of such a forum, we must expect that movements for Jewish survival will independently continue to act out their convictions as to how to insure Jewish continuity and creativity.

5. I touch on just two more of the many questions which remain to be considered. The first has to do with the seriousness with which the Reform and Reconstructionist movements treat the partners to mixed marriages and what they will try to demand of them and of their children.

Will they, for example, treat the children of a Jewish mother in a mixed marriage with the same insistence on an intensive Jewish education and experience as they should those of a Jewish father? What will they do about avoiding the hypocrisy that would inhere in accepting the unconverted non-Jewish partner into Jewish ranks and privileges, as if they had already undergone conversion? Will they insist on circumcision for the male children? Briefly, will their decisions in regard to patrilineal descent bring about a deepening of their own standards of Jewish behavior and commitment?

6. The second question relates to the reaction of halakhic Jewry to the situation that will arise if there is a proliferation of Jews whom the halakhah cannot recognize. Actually, in this regard little or nothing can be expected from halakhic Jewry in the way of compromise.⁵ The children of non-Jewish mothers will continue to be excluded from Jewish ranks: Orthodox and traditional rabbis, moreover, will become more exacting in their insistence on proper identification of candidates for marriage, and they are likely to be even more circumspect than they are now in their contacts with non-Orthodox Jews. That is unfortunate, but the trend in that direction has been pronounced ever since the establishment of the State of Israel and the consequent involvement of the Orthodox in the struggle for political power. Therefore, as far as halakhic Jews are concerned, the Reform and Reconstructionist moves have simply heightened their alertness to breaches in the wall of traditional Jewish identity which they will fill whenever they appear. The patrilineal recognition will apply only among those Jews who are convinced that the time has come to equalize the status of men and women within the Jewish people.

Thus, we are witnessing an historical struggle that has never ended, from the Bible until our own day. In the final analysis, the direction in which consensus will lead our people will determine who will, and who will not, be accorded recognition as Jews. Wolfson's Philo pointed up the dilemma of Jewish unity and continuity. Without family loyalty — which means a high degree of biological continuity through endogamous marriage — the Jewish people is likely to suffer many defections. Equally, unless our people is dedicated to the highest social, moral, esthetic and intellectual standards of which men and women are capable, it is questionable whether we can preserve ourselves as a people. And among those standards, surely one of them is the need to equalize the status of men and women in all that pertains to the preservation and quality of family life.

5. HaRav Avraham Isaac HaKohen Kook, for example, held to the view that only in exceptional cases could it be assumed that a non-Jewish female could want seriously to be a Jewess. His version of Jewishness was, of course, confined strictly to the halakhic view. He could not, with all his "liberalism," accept the legitimacy of a non-halakhic Judaism (cf. *Ezrat Kohen* [Jerusalem: Mosad HaRav Kook, 1969], R.68, pp. 281-2).

Halakhah and History

ROBERT GOLDENBERG

PROFESSOR COHEN HAS WRITTEN HERE A first-rate piece of scholarship. That emerges even from this condensed version of his paper, though I have been privileged to see the longer version as well. I have nothing to add to Dr. Cohen's data, or to the interpretations he offers of the texts most central to his topic.

Instead, I wish to focus here on the rather off-hand remarks with which Dr. Cohen's paper ends; I think they reflect an extremely important question relating not to the content or the quality of his scholarship, but rather to its implications. The remarks in question run as follows:

... Does my analysis have Halakic implications?

The answer is no. Jewish law, like other legal systems, is based on precedent, and what the historian can contribute to Halaka is the collection of precedents and the analysis of legal history. But history and Halaka are autonomous disciplines, each with its own methods, assumptions, and goals, and the historian cannot tell the jurist which precedent to follow or which decision to adopt. The modern jurist will, of course, consider the data provided by the historian, the sociologist, the economist, the politician, etc., but it is the jurist who makes the decision, and he makes his decision in accordance with his own legal philosophy. In its interpretation of the Constitution the Supreme Court considers, but is not bound by, the original meaning of the document in its 18th century context.

Dr. Cohen then concludes with the following words:

The jurist seeks to determine the law, the historian seeks to determine the truth. The two need not coincide.

Methinks the author doth protest too much; indeed, the last two sentences make me wonder whether he himself does not think the same. Of course it is true, as he says, that jurists must proceed according to their own legal philosophies, but it is not true that all legal philosophies so scrupulously abstain from contact with the grubby world of everyday fact. That is a question over which legal philosophers have debated for ages, and Shaye Cohen the historian need not be more modest on behalf of his own field than numerous legists have been for him. Surely the law does have some connection to lived reality; to shed new light on that reality and then to expect the law to look the other way is to mock both history and the law.

One of the stock themes in modern Jewish resistance to religious

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innovation has been, "But that has never been done before!" Thus we are assured by opponents of the patrilineal principle that rabbis had never countenanced such thinking in the entire history of their tradition, as though such lack of precedent proves the claim that we should not countenance it now either.¹ But this, after all, is a historical argument placed in service to a halakhic tendency; why, if the legal authorities are willing to argue from history, should the historians be so chary of seeking to influence the halakhah?

I wish now to consider some ways in which historical discovery might be brought to bear on halakhic decision-making. In particular, there are two themes that I wish to raise in the light of Dr. Cohen's final remarks.

The first of these themes is well known to students of the classical rabbinic tradition:

And why do people mention individual opinions alongside those of the majority, since the halakhah follows the majority? So that if a court sees merit in the individual opinion it can draw support from it — for a court may not countermand the rulings of a fellow court unless it is greater than the other in number and wisdom . . .².

Similarly, the Babylonian Talmud quotes three times the saying that "R. Simeon is worthy of being relied upon in the hour of need," and cites a similar saying about R. Eleazar an even greater number of times³. Thus, the halakhic tradition itself recognizes that sometimes opinions fail to gain the support of the consensus of Israel, but are, nonetheless, worthy of being kept in the communal memory, against the day that people may decide to follow them once more.

To be sure, in the present case, Dr. Cohen makes no claim to have found previous rabbinic use of the patrilineal definition of Jewish identity, and it may well be the case that no amount of digging could find any. But to renounce as a matter of course even the possibility that his historical research might have "Halakic implications" seems far more modest than the circumstances require.

The refusal to see precedent in the results of historical inquiry is especially portentous in a system like the halakhah, which allows no possibility of statutory revision of the law, let alone of Constitutional amendment. It is true, as Dr. Cohen states, that the Supreme Court is never bound by the findings of eighteenth-century history. But it is also true

1. One is put in mind of the Hatam Sofer, who announced with terse simplicity that the Torah forbids anything new, or of a recent observation by Dr. Seymour Siegel that, in many quarters, no innovation is accepted until it has been approved by the *gedolim*, while you can't become a *gadol* unless you are opposed to all innovation. It is fortunate that the *heter iska*, or the *prozbul*, were received with greater imagination than the present controversy seems to have evoked.

2. Mishnah *Eduyyot* 1:5.

3. *Berakhot* 9a, *Shabbat* 45a, *Gittin* 19a; *Eruvin* 46a, *Niddah* 6ab, 9b.

that the Court can, and frequently does, issue a ruling which tells the Congress to change the law if the decision is displeasing, and Congress frequently does do just that. In the case of the halakhah, legal development can take only the form of reinterpretation of previous rulings; the historian's ability to unearth more such rulings and make them available to future decisors is, thus, of huge importance to the development of Jewish law.

Unlike the first, the second theme I wish to raise goes far beyond the habitual boundaries of halakhic thinking. Dr. Cohen seems ready to concede that halakhic decision-making is an "autonomous discipline," not to be governed by the findings of scholars in other fields. But the isolation of the halakhah from other forms of intellectual inquiry runs the risk of making it into a kind of game, divorced from the real lives of those who wish to follow its norms. What matters now is only that the decision be reached properly, not what its consequences or motives may be; if a similar question has already been resolved, there is no need to attend to differences in world-view that may have arisen between the time of that decision and our own; if Maimonides has given a clear ruling in a certain matter, then the matter is closed.⁴ It implies no disrespect for Maimonides to conclude that such reasoning is far from convincing, and no rejection of the importance of precedent to realize that other considerations, too, play a role in all juridical activity. Otherwise, one falls into a kind of intellectual purism (one might call it legal fideism) that raises profound religious questions; what, on such an understanding of religious law, could a "kingdom of priests and a holy nation" possibly mean?

In general, no religious authority in the history of Judaism has ever rendered his (sadly, no "or her" is needed here) decisions free of his other intellectual or moral predilections. Sometimes the identification of these predilections is primarily a scholar's activity, of considerable academic interest but with little direct impact on the future development of the community as a whole. Sometimes, however, the historian is in a position to clarify the context in which whole trends have arisen or crucial turnings in the history of Jewish thinking have occurred. For example, it requires no return to the "lachrymose conception of Jewish history" to recognize that the earliest rabbis formulated their ideas and teachings in the aftermath of a huge catastrophe — the Romans' destruction of Jerusalem and its Temple — and then to ask how that disaster made its mark on the substance of early rabbinic teaching. The theologian may assume that our age is similar to that early one (Jews of our time have suffered greatly, too) or prefer to see our age as decisively different (the return to Zion, the breakdown of corporate Jewish life, etc.), but it falls to the histo-

4. Similar problems occasionally arise in Jewish theology, where the consensus of medieval authorities is taken to foreclose further inquiry into various questions.

rian to supply the information and the conceptual framework in which such decisions can be made. This is an example taken from theology, not halakhah, but the point remains: the historian's quest for context and connection is by no means without "Halakic implications," even if it ultimately falls to the halakhist to draw these. For the halakhist to refuse such a task, or for the historian to encourage such refusal, deprives the halakhah of the religious seriousness which is its most essential feature.

And here the connection between history and the question of matriliney becomes most crucial. If the context of the earlier law is no longer our own context, then how do we know that the earlier law itself should still be our own? How do we know that those who rendered the earlier decision would have reached the same conclusions had they lived under our circumstances rather than the ones prevailing in their own time? If — as Cohen suggests — the matrilineal principle arose (even in part) under the influence of the Roman conception of marriage and legitimacy, how can we simply assume that it should remain intact in a culture that views these broader questions so differently? If — as Cohen also suggests — the implicit premise of the matrilineal principle is that Jews and gentiles constitute diverse species, do we really wish to continue embodying this premise? I cannot believe that most of us do; we know too much of previous Jewish experience with such a premise in our time.⁵

Of course "it is the jurist who makes the decision"; of course the Supreme Court is not limited by the findings of historians of the eighteenth century. The historian must, in the end, leave the law to the jurists, but the jurists must, in turn, be kept answerable to the historian's latest discoveries. In the world of the halakhah, where passing a better law is not permitted under the current rules, the alternative would be disastrous. In other words, if we wish to see halakhah as the authentic behavioral expression of our deepest religious values, then we must form our halakhic norms in full consciousness of those values, and we must remain conscious that such values are always formed under the influence of the world in which we live and function. To isolate the halakhah from everything else we know, to let the final word be that "the historian cannot tell the jurist which . . . decision to adopt," is to reduce the moral gravity of the halakhah to intellectual formalism, and that would be a catastrophic impoverishment of Jewish life.

5. A related question arises with respect to the role of Jewish women in the lives of their communities, perhaps the most pressing issue in American Jewish life today. The point is not how far the system as it has evolved can be adapted to women's legitimate demands; the point is to consider the implications of the fact — it is a fact — that the system is entirely the product of men, that the roles hitherto assigned to women were assigned to them by men, that the exegeses cited to justify these roles were exegeses developed by men, and so on. Rabbinic Judaism and its halakhic character reflect their original cultural environment, an environment that simply took for granted that the world ought to be as men have shaped it. If, as it is to be hoped, that environment is now passing into obsolescence, it is not obvious how we ought to treat its artifacts.

Rationale for “Matrilineal” and the Failure of “Patrilineal”

ARNOLD M. GOODMAN

IN HIS PROVOCATIVE AND INFORMATIVE ARTICLE, Professor Cohen focuses on the origins of the matrilineal principle. His review of the several theories is helpful, and his suggestion that this is but another example of the Rabbinic fascination with mixtures and hybrids is especially innovative. He further proposes that the matrilineal principle may also be viewed in the context of marriage under Roman Law.

In that system's earliest formulation, a valid marriage, *Iustum Matrimonium*, required that both parties be Roman citizens possessing the status of *Connubium*. Where such *Connubium* was absent, the status of the child originally followed that of the mother, whether her status was higher or lower than that of the father. At a later time, Roman law came to specify that the child's status follow that of the lower-status parent, be it the father or the mother.

Professor Cohen demonstrates the conceptual similarity in this area between Roman and Talmudic Law. He then challenges this hypothesis, arguing that, without undertaking an exhaustive study of Rabbinic Hellenism, we cannot accept the proposition that the Rabbis followed a Roman legal model.

Be that as it may, it is obvious from the passage in Mishnah *Qiddushin* (3:12) that the matrilineal principle developed in Rabbinic Judaism precisely because the marriage of a Jew and Gentile lacks both validity (*Iustum Matrimonium*) and any potential form of validity. This is the logical interpretation to be accorded to the Mishnaic statement that “Any woman who does not have the potential for a valid marriage, either with this man or with other men, the offspring is like her. And what is this but the offspring of a slave woman or Gentile woman?” The Romans would have described the partners as lacking *Connubium*.

In Jewish law, the husband is called *Ba'al* or master. *Ba'al* also connotes ownership, and the Mishnah, in fact, does view marriage as that process by which a man “acquires” a wife (*Qiddushin* 1:1). The husband, in antiquity, did have a property right in his wife, and this right naturally extended to all fruits of the marriage, including children. If, however, there is no halakhic marriage (the Talmudic term is *Kiddushin*), *Kiddushin*

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aino tofes, then the marriage has not taken hold. The husband then fails to acquire his status of *Ba'al*; he is without property rights either in the woman or in any of her children.

In essence, in a marriage between a Jewish man and a Gentile woman the man has no halakhic relationship with the mother and, therefore, to any of the children born of their union. Even though married civilly and husband and wife in the eyes of the world, they are still not married according to Jewish Law; *Kiddushin aino tofes*. Vesting the child, then, with the religion of the mother need not be a statement affirming the matrilineal principle. The Mishnah may reflect what is the logical conclusion of denying the husband the status of *Ba'al*.

The practical application is simple. Where a Jew and Gentile marry, the child has the mother's status. When both are Jewish and there is *Kiddushin*, then the child's status is a reflection of that of the father and the mother. The rule of thumb that Jewishness flows from the mother is not accurate. It is when there is no *Kiddushin* that status is derived from the mother because the marriage lacks halakhic standing.

Mixed marriages are not a new phenomenon in Jewish life. The Torah, as well as the Talmud, was well aware that men and women of different religions would be attracted to one another. Deuteronomy (7:3,4) states an uncompromising position regarding mixed marriages, “You shall not marry them (the dwellers of Canaan). Your daughter shall not be given to his son; you shall not take his daughter for your son for she will turn away your son from Me and they will worship foreign gods.”

“You shall not marry them” is an important Jewish principle rooted in our Tradition for millenia, whereas the Los Angeles resolution is a consequence of the refusal of many contemporary Jews to be bound by this ban. The Reform Rabbinate, many years ago, granted its members free choice whether or not to solemnize a marriage between a Jew and a Gentile, and many Reform Rabbis do officiate at such weddings. Most Reform Temples welcome mixed married couples with their children into their midst, and there has been a long-standing practice to regard these children as Jewish, if they have been educated at Temple schools.

The pressure, then, to rethink what has been, for centuries, the Jewish principle of “matrilineal” flows from the realities of contemporary Jewish life. Socio-economic mobility has made it possible for many — albeit not all — barriers between Jews and Gentiles to be removed.

A sense of “fairness” also contributed to the pressure to adopt patrilineal. Why should a Jewish father have lesser rights in his child than the mother? Discriminating in favor of one over the other runs counter to the democratic principles which loom so highly for the young.

The Los Angeles resolution could very well have specified that the child of a Jewish father and a Gentile mother, who has received a Jewish education and then participated in an appropriate ceremony, such as Bat Mitzvah or Confirmation, has, in effect, been converted. This would have

been consistent with the Reform perspective that the conversion process need not be more than a period of study followed by an appropriate public ceremony which is not confined to *Tevillah* (ritual conversion) and *Brit Milah* (or *Hatafat Dam Brit*). Since the Reform Rabbinate does begin, however, with the presumption that the child of a Jewish father is Jewish, it cannot view the requirement of study and ceremony imposed upon a child of a mixed marriage as a form of conversion.

A generation ago, conversion made Jewish-Gentile liaisons palatable to some Jewish parents, but that is no longer a given when Jew and Gentile decide to marry today. Jewish young people do not always believe it to be right to expect their mate to take on Judaism in order to “make my parents happy.”

Nevertheless, conversion is still a reality in modern Jewish life. There are differences that set off Reform conversions from Conservative, and Conservative from Orthodox, but what is not in dispute is that conversion, looked at askance by some parents of a generation ago, is now regarded as the most favorable of circumstances if a child develops a commitment with a Gentile.

Young people always challenge whatever restrictions are placed before them, and this generation is no exception. Today's youth is committed to religious freedom and to freedom of conscience. Many regard as totally inappropriate the pressure placed upon their Gentile “significant others” to convert. Over and again we have heard young Jews say, “I am not prepared to convert to Christianity. Why, then, should he or she become a Jew? Jews must learn to accept people as they are.” This attitude almost always results in a mixed marriage where each mate retains his or her religious identity.

A major decision that such couples often face is determining the religion of their children. “Do we raise them as Jews or as Christians?”

The Halakhah is clear. A Gentile mother cannot give birth to a Jewish child. For such a child to become Jewish, even if the father is Jewish, there must be a conversion. To presume, as does the CCAR resolution, that a child born of a Jewish father is Jewish has no basis in Jewish law or tradition.

The patrilineal resolution gives de jure status to what has long been the de facto reality in most Reform Temples. Jewish fathers have, for many years, brought the children of their Gentile wives to Reform Temples. These children have come to perceive themselves as Jewish and, in many instances, this perception will remain unchallenged throughout their lives. Should these presumably Jewish children seek to marry into Orthodox or Conservative families, a great deal of confusion and pain will be caused. Should these children become involved with Israeli officialdom, their problem will be even more exacerbated.

Most pulpit Rabbis have already had some experience dealing with the presumed Jewish child who seeks to marry a young man or woman

from their Congregation. It isn't easy to tell young people who have been confirmed in a colleague's Temple that they are not really Jewish. It is even more difficult to tell such a young woman that, unless she herself undergoes an appropriate conversion, the vast majority of the Jewish People will not consider her children Jewish.

The formal adoption of patrilineal by one of our major groups guarantees an increase of such cases during the years ahead. Within a decade the numbers of presumed Jews will have proliferated, and each situation will have to be treated with great care and diplomacy.

If the patrilineal decision could, in fact, halt assimilation and strengthen the chances of Jewish survival, then one might be tempted to push for a *Takkanah* on the grounds that *Yaza hefsedo bis'haro* (the positive results more than compensate for the negative).

Experience has demonstrated otherwise. Our many compromises with the consequences of mobility and modernity have merely served to weaken us. Our mad rush to establish conversion programs to accommodate the increase of Jewish-Gentile relationships has not made for a healthier community. Do we really believe that having thousands upon thousands of Jewish children with a set of Gentile grandparents and with scads of Gentile uncles, aunts, and cousins is a formula for Jewish survival? Will such children, upon arriving at maturity, really become part of Jewish life?

Every Rabbi can, hopefully, point to converts who are truly *Gerei Zedek*, sincere and committed Jews who are positive additions to the community. The sad truth, however, is that, in most instances, conversion comes about when marginal Jews marry marginal Christians, who themselves become marginal Jews; they, in turn, raise marginal Jews who have to deal with many Christian influences in their own extended families.

Patrilineal will not solve the problems of assimilation or of intermarriage, or of weakening Jewish loyalties. Patrilineal is an even weaker reed than conversion with which to attempt to prop up contemporary Jewish life. Indeed, if we accept patrilineal, then any number of Gentile women who marry Jewish men will no longer have any incentive to convert. Mothers who are Jews-by-choice, with all of their potential limitations as Jews, are still far more preferable than mothers who are not Jewish at all. The former group, at least, will have had some instruction in our Faith, in our history, and in our traditions.

Even if it were conclusively shown that matrilineal has its origins in the most obtuse of rationales, a two-millenia tradition ought not be abrogated merely for the purpose of meeting the demands of modernity. The Reform Movement, by its unfortunate resolution, has split itself off from normative Judaism. It may well have created the circumstances which will cause it to be perceived as a Jewish sect outside of the mainstream of Jewish life.

This is a future high price to pay for a benefit that will prove to be very limited, even in the short run.

Patrilineal Descent — a Solution or a Problem?

ROBERT GORDIS

NO ONE WHO HAS READ PROFESSOR J.D. Cohen's essay, "The Matrilineal Principle in Historical Perspective" can fail to be impressed by its wide learning, its meticulous analysis of sources, and its restraint in drawing conclusions from data which are often admittedly unclear or fragmentary.

In surveying the history of the practice, the author points out that patrilineal descent prevailed in biblical times until the Babylonian Exile — a position generally conceded by all competent scholars. The general view of the matrilineal principle, that, in a mixed marriage, the offspring is regarded as Jewish if the mother is Jewish and as gentile if the mother is gentile, was introduced by Ezra (usually dated in the fifth century B.C.E.) during the early years of the Return. His purpose was to prevent the wholesale introduction of foreign wives into the small, struggling Jewish community.

Regarding this widely held view, Professor Cohen expresses strong doubts. On the contrary, he believes that the principle was first introduced in the Mishnah, which was compiled early in the third century C.E. The basic sources for this new ruling are the Mishnah *Qiddushin* (3:12), according to which the offspring of a Jewish father and a gentile mother is regarded as a non-Jew, and Mishnah *Yebamot* (7:5), which may or may not be connected with the passage in *Qiddushin*, and which declares the offspring of a gentile or slave father and a Jewish mother to be a *mamzer* (illegitimate).

This latter ruling is dramatically reversed in the Talmud (after the third century C.E.), which establishes the principle that the offspring of a Jewish mother and a gentile father is not a *mamzer*, but a legitimate Jew.¹ The other half of the matrilineal principle remains unchanged; the child of a Jewish father and a gentile mother has the status of a gentile.

Before the period of the Mishnah, and throughout the period of the Second Commonwealth, Professor Cohen avers, the biblical principle of patrilineal descent is maintained, as is clear from Book of Jubilees, the Qumran sectarians, Josephus, Philo, as well as Paul, in the Acts of the Apostles in the New Testament.

1. Cf. B. *Yebamot*, 44b-55b. This position is already maintained by some scholars in the Tannaitic period. It is cited by R. Simeon ben Judah in the name of R. Simeon (ben Yohai) (*Tos. Qiddushin* 4:16; p. 272, ed. Lieberman).

What led to the reversal in the Mishnah of the biblical principle of patrilineal in favor of matrilineal descent? Cohen properly rebuts the view that the principle is a relic of an assumed matriarchy. He dismisses the idea that it represents an effort by the Rabbis to assuage the anguish of Jewish women who, it is alleged, were raped by the Roman soldiers during the Jewish wars of rebellion against Rome. He also rejects two other suggestions — that the principle was adopted because of the uncertainty of a child's paternity as against the certainty of motherhood or because of a recognition of the greater intimacy of the mother-child relationship.

Instead of these proposed views, he offers two suggestions. First is the possibility that the new matrilineal doctrine was introduced by the Rabbis under the influence of Roman law in which the principle was operative. Second, he proposes the theory that the adoption of the matrilineal principle was an inner development in Judaism. According to biblical law, the mixture of plants and the inter-breeding of animals of different species (*kilayim*) is forbidden.² While no reason is assigned for the prohibition in the biblical text, it has been suggested that these acts would contravene the order of nature as ordained by the Creator who intended each species to be independent and distinct from all others. The opposition to the inter-marriage of Jews and gentiles would be an extension of the same opposition to the mixing of types — here Jew and gentile.

Professor Cohen's paper is an impressive demonstration of sound scholarship and careful scientific method. However, I encounter some problems with his position. I raise these issues *kesho'el velo kemeshibh*, in a spirit of inquiry rather than of debate.

1. Is it conceivable that the principle and the practice of patrilineal descent, with all the prestige of the Bible and the centuries of practice behind it, would be scrapped and an antithetical practice introduced in the Mishnah with no explicit discussion of the change?

When the literal meaning of the biblical injunction, "an eye for an eye" (Ex. 21:24), was replaced by the rabbinic interpretation that monetary compensation and not physical mutilation is intended, the subject was argued in the Talmud.³ Moreover, the older view of *lex talionis* was stoutly defended by the conservative scholar, Rabbi Eliezer ben Hyrcanus. In our case, was there no one to uphold the older praxis against the innovation? In other words, could an age-old, Scripture-sanctified practice disappear and leave no trace behind it? — and this in an age of great literary activity?

2. We may explain both halves of the position of the Mishnah as consistent in penalizing both types of inter-marriage, since it stigmatizes the offspring of a Jewish father and a gentile mother as a gentile, and the issue of a gentile father and a Jewish mother as a *mamzer*. But how explain

2. Lev. 19:19; Deut. 22:9.

3. Cf. B. *Baba Kamma*, 84.

the radical *volte-face* in the Talmud which leaves the former ruling intact but sets aside the latter by conferring upon the child of a gentile father and a Jewish mother the status of legitimacy and full Jewishness?

3. Two reasonable explanations for the change to the patrilineal principle are advanced, but they are not without difficulties. That the Rabbis were influenced by their Hellenistic-Roman environment has been amply demonstrated by many scholars, Adolf Schwarz, Samuel Krauss, Boaz Cohen, Saul Lieberman and, *yibbadel lehayyim*, David Daube, among others. But the impact has generally been felt in language, minor customs, and limited legal techniques. The laws of descent which affect the status of the entire Jewish people and are central to the Jewish concept of holiness were of fundamental concern to the Rabbis. It is difficult to believe that they would set aside the age-old tradition of patrilineal descent and follow the law of the Romans, whom they regarded not merely as oppressors and pagans, but as steeped in licentiousness and unnatural practices, an impression which the life-style of the Roman emperors and aristocracy did little to dispel.

4. The suggestion that the antagonism to mixed marriages may reflect the opposition in Jewish thought to any mixture of types in the plant or animal kingdoms that disturbs the original pattern of creation is very attractive. But here, too, some questions remain. Why did this alleged theological principle surface in the Mishnaic period and not before? Moreover, since the Amoraim of the Talmudic period legitimized the offspring of a gentile father and a Jewish mother, it is clear that this alleged opposition to mixtures did not operate for them. Finally, we note that this theological rationale for the prohibition of mixtures finds no echo in the Bible or in Talmudic sources.

4. Bahya ibn Paqudah (Introduction to *Hobhot Halebhabhot*) and Rashi (on Lev. 19:19) declare that the *Kilayim* belongs to the category of Divine commandments that are not susceptible to rational explanation. Maimonides declares that mixing of types was practiced by pagan priests and, therefore, forbidden by the Torah (*Moreh Nebhukhim*, chap. 37). Such practices may have been fertility rites. The same explanation has been advanced by Maimonides and many modern scholars for the prohibition of "seething a kid in its mother's milk" (Ex. 23:19; 34:26; Deut. 14:21). This brilliant insight was adopted by virtually all modern scholars after the discovery of a similar cultic rite in Ugaritic literature ("The Birth of the Gods" 1:14, see C.H. Gordon, *Ugaritic Manual* [Rome, 1955]). Recently, this widely held view has been challenged by M. Haran, who explains the biblical prohibition as motivated by humanitarian considerations, like the law in Deut. 22:6f. Nahmanides anticipates some modern scholars by suggesting that the mixing of species means to change the order of nature and to imply that the work of the Creator is imperfect (*Commentary* on Lev. 19:9, ed. Ch. D. Chavel [Jerusalem, 1960], vol. II, pp. 120-24).

This idea *may* have operated in biblical times, albeit unconsciously, but it is not applied to mixed marriages in either the Bible or the Talmud. It was not until the rise of white racism in the West that the cohabitation of a white and a black was declared "miscegenation," the etymology of which was misunderstood as meaning the "wrong kind of intercourse;" actually, the term from the Latin *misceo* means simply "mixed relations." The Nazis made their contribution by regarding sexual relations between Jews and gentiles as intercourse between two different biological species; their "scientists" wrestled with the "problem" of how such a union could produce offspring.

5. Revolutionary changes in life and law do not arise in a vacuum; they are generally the result of some major event or crisis. What was the impetus for so fundamental a modification in Rabbinic law?

The period of Ezra and Nehemiah, conventionally dated in the fifth century B.C.E., offers an ideal *Sitz im Leben* for the introduction of the matrilineal principle. Our biblical sources make it clear that intermarriage with gentile women by Jewish men, including members of the priesthood, was widespread.⁵

However, we find no reference to Ezra's expelling Jewish women married to gentile husbands, and it has been suggested by some that the reason lies in the fact that the patrilineal principle was operating, so that children born of a Jewish father and a gentile mother were regarded as authentically Jewish. This can hardly be the reason, since Deuteronomy was clearly the biblical source of Ezra's drastic action (cf. Deut. 23:4-9), and it forbids with equal force the intermarriage, either of males or of females: "You shall not enter into marriage with them (i.e., the seven nations in the Promised Land); you shall not give your daughter to his son, nor take his daughter for your son" (Deut. 7:3). A far more plausible explanation is at hand to explain Ezra's ignoring the marriage of Jewish women to gentile men. In a patriarchal society the woman in such cases would leave her own community and join that of her gentile husband. In sum, exogamous marriages of this kind, however painful for the family, did not pose a threat to the religious integrity and cultural homogeneity of the community, since the offending members were removed from its confines. The reverse situation, however, of foreign women married to Jewish men and living in the Jewish community, did pose a challenge to the small, struggling Jewish settlement seeking to preserve its own ethnic character. As Nehemiah 13:23, 24 explicitly indicates:

In those days also I saw the Jews that had married women of Ashdod, of Ammon, and of Moab; and their children spoke half in the speech of Ashdod, and could not speak in the Jews' language, but according to the language of each people.

It was a critical hour for the preservation of Jewish identity, since the Jewish people was a tiny island in a vast, pagan sea and intermarriages that were common or involved important members of the community would undermine its homogeneity and survival. It is a very plausible assumption that, to meet this challenge, Ezra and Nehemiah modified the older patrilineal principle which operated in the First Temple period and imposed the ruling that the offspring of a gentile woman would not be Jewish. On that basis, they proceeded to expel all families that insisted upon retaining gentile wives in their midst.⁶

As I have pointed out elsewhere, the objections to intermarriage

5. Ezra 9:1ff., 10:1-4; Neh. 10:30f., 13:1f., 23ff. See also Mal. 2:11-16.

6. Ezra, chs. 10; Neh. 13:28. Also Neh. 13:7f. in conjunction with 13:1-3.

during this period were basically national-cultural rather than religious. The women were charged with rearing their children to speak alien languages, but at no point are they charged with idolatrous beliefs or practices.

The ban encountered substantial opposition from many of the more influential people. There would, therefore, be every inducement for Ezra and Nehemiah not to call attention to the innovative character of the ban and, on the contrary, to relate it to the Torah's total prohibition of marriages with the Canaanites and the somewhat less stringent interdict on the Moabites and the Ammonites.⁸

6. In the longer version of his paper, Professor Cohen seeks to buttress his contention that the matrilineal principle was not introduced by Ezra and Nehemiah by citing the evidence of sources emanating from the Second Commonwealth period, none of which makes reference to the matrilineal principle. However, it should be noted that there are no explicit references to the patrilineal principle either. To be sure, the argument from silence must often be invoked in historical research when sources are lacking, but it is, at best, inferential.

The Book of Jubilees forbids both types of out-marriage. The author directs his anger most intensely against an Israelite woman marrying a foreigner, but, as Professor Cohen has noted, this is due to the fact that he is paraphrasing the biblical tale of Dinah and Shechem (Genesis 34). Similarly, all the writers of the Second Commonwealth period who are cited, Jubilees, The Testament of the Twelve Patriarchs, Josephus, and Philo, are also dealing with biblical incidents in which the patrilineal principle is in operation.

As for Herod "the Idumean" and his line, the antipathy of the Jews to him was based more on his unabashed espousal of Roman ways and his flouting of Jewish tradition rather than on his legal status. On the basis of the patrilineal principle, Herod would qualify as a Jew since his grandfather Antipas had already been converted to Judaism.

The New Testament also seems to offer some testimony on the question. The passage in Acts (16:1-3) tells of a disciple of Paul, Timothy, who was "the son of a Jewish woman who was a believer but his father was a Greek." Before taking Timothy on as a companion in his missionary travels, Paul "took him and circumcized him, because of the Jews that were in those places for they all knew that his father was a Greek." Why did Paul circumcize Timothy? Was Timothy a Jew with a gentile father, or a gentile with a Jewish mother?

In a paper scheduled for publication,⁹ Prof. Cohen argues that the

8. Cf. the clear dependence of the language in Neh. 10:3 on Deut. 7:13 and in Neh. 13:1-3 on Deut. 23:4-7.

9. The paper is entitled "Was Timothy Jewish (Acts 16:1-3)? Patristic Exegesis, Matrilineal Descent and Rabbinic Law" and is scheduled to appear in the *Journal of Biblical Literature*.

Church Fathers were correct in declaring that Timothy was a gentile with a Jewish mother. However, if this is the case, why should Paul have circumcized him? Paul's expressed attitude toward the rite of circumcision fluctuated widely, his views being shaped to meet the outlook of his particular audience. It would seem, therefore, that he circumcized Timothy because he did not wish to antagonize his potential audiences which contained many Jews who would regard Timothy as a Jew by virtue of his mother's Jewishness. In any event, Paul's problems with circumcision are not germane to the Halakhah in Judaism.

7. We may go further. Even if we grant that our Second Commonwealth sources offer no evidence for the matrilineal principle, it would not prove that the principle did not exist. Thus, Morton Smith has argued that Ezra's reform had achieved very partial success during the Second Temple period, hence the silence in our sources.¹⁰

Another explanation may also be suggested. The Second Temple sources, the Elephantine papyri, the Qumran Scrolls, Philo, Josephus, and the New Testament, emanate from groups that were removed, in greater or lesser degree, from the Pharisaic normative tradition, geographically and/or ideologically. They are the products of aberrant sects that vigorously opposed Pharisaism from various points of view. This is clearly the case with Jubilees and the Qumranites and there is solid evidence that the sects also differed from the Pharisaic leadership in the area of sexual conduct and family law. (I have called attention elsewhere to a striking example of the radically different approaches toward sexual conduct and family law by the Qumranites and rabbinic Judaism.)¹¹

The Jews of Elephantine constituted an isolated community of Jewish mercenary soldiers with few contacts with Jerusalem,¹² so that variations in their religious practices are entirely to be expected. Philo, living in Alexandria, also presents divergences from the Palestinian halakhah.¹³ More than an hour's air flight separated ancient Egypt and Palestine.

Josephus' relationship with Pharisaism is more complex. The historian is a slippery character who seeks to persuade his readers that he had spent three years with each of the various schools, Pharisaism,

10. See his *Palestinian Parties and Politics that Shaped the Old Testament* (New York, 1971), p. 121f.

11. On the passage in the *Serekh Haedah* (Col. 1, 11. 9-10) and its significance, see "The Knowledge of Good and Evil in the O.T. and the Dead Sea Scrolls" in *Journal of Biblical Literature*, vol. 70 (1957): 123-38, reprinted in R. Gordis, *Poets, Prophets and Sages: Essays in Biblical Interpretation* (Indiana: Indiana University Press, 1971), pp. 198-216.

12. See B. Porten, *Archives from Elephantine: The Life of an Ancient Jewish Military Colony*, (1968).

13. On Philo's relation to the halakhah, see J.Z. Lauterbach in *Jewish Encyclopedia*, s.v. Philo Judaeus, "His Relation to the Halakhah," vol. X, pp. 15-18. Cf. also S. Belkin, *Philo and the Oral Law* (New York: 1940); L.H. Feldman, *Studies in Judaica: Scholarship on Philo and Josephus* (1937-63).

Sadduceeism, and Essenism,¹⁴ a claim to be taken with several grains of salt, as in the case of other of his statements, particularly when he is defending himself.¹⁵

Ezra was one of the primal heroes of Pharisaism and Rabbinic Judaism. The Talmud declares, that “Ezra was worthy of having the Torah given through him, had not Moses preceded him.”¹⁶ Undoubtedly, the competitive sects were less enthusiastic about him and his achievements than were the Pharisees and their rabbinic successors.

In general, each sect regarded the others as misinterpreting the Scriptures. A radical change from the patrilineal to the matrilineal principle which contravened the biblical text would be the kind of innovation that distant communities like Elephantine and Alexandria in Egypt, or conservative groups like the Sadducees, the Qumranites, and the authors of the Pseudepigrapha, who were close to them, would bitterly oppose.

What I am suggesting is that the differences between the Second Commonwealth and the Mishnah may be viewed, not diachronically, but synchronically, not *zeh aḥar zeh* “this after the other,” but *zeh keneged zeh* “this against the other.” In other words, the divergent views present a contemporary conflict of attitude. Parenthetically, I may add that the linear approach and the neglect of the synchronic alternative has long been a staple in modern biblical scholarship, a methodological error to which I have frequently called attention. To revert to the Second Commonwealth period, with the disappearance of the sects after the destruction of the Temple, the same fate overtook their divergent halakhah.

These queries and observations do not diminish the high quality of Professor Cohen’s paper and the significant contribution that it makes to the history of an important question, where the paucity of evidence must induce a tentativeness to our conclusions. My purpose has been to broaden the discussion, and to suggest the need for additional research.

Professor Cohen indicates that he does not deal with the practical problem which has been agitating the Jewish community ever since March 15, 1983, when the Central Conference of American Rabbis — following a series of earlier decisions pointing in the same direction¹⁷ — voted to accept as Jewish the children born of a Jewish father and a gentile mother. They ruled that there would be a presumption of Jewish

14. Josephus, *Vita*, sec. 2.

15. See Shaye J.D. Cohen, *Josephus in Galilee and Rome* (Leiden: Brill, 1979).

16. B. *Sanh.*, 21b. See also B. *Berakhot* 4a: “Israel deserved to have a miracle performed for them in Ezra’s days as happened in the days of Joshua bin Nun, had not the sin intervened,” as well as B. *Gittin* 59a and *Midrash Qohelet Rabba* 1:8. Note, too, the large number of *Taqqanot* ascribed to Ezra in rabbinic sources.

17. “The Report of the Committee on Patrilineal Descent on the Status of Children of Mixed Marriages,” adopted at the 94th Annual Convention of the Central Conference of American Rabbis on March 15, 1983, based on resolutions adopted in 1947 and 1949, and the statement in the *Rabbi’s Manual*, 1961 edition, which are cited in the 1983 report.

descent if the parents express a wish to have the child regarded as Jewish "by appropriate and timely public and formal acts of identification with the Jewish faith and people."

The point need not be belabored that this decision represents a radical break with the tradition which is at least a millennium and a half old and that this ruling nullifies the accepted halakhah, for this is obvious.

It may perhaps be unnecessary to point out that marriage laws are often deeply rooted in the human psyche, both conscious and subconscious, going back to primordial impulses and attitudes, that we can no longer recover. Often they are not explicable on rational grounds. Thus, Jewish law permits the marriage of an uncle and a niece but forbids the marriage of an aunt and a nephew. The halakhah has no objection to the marriage of first cousins, though it is forbidden in many civil codes.

Many varied speculations and theories explaining the rationale underlying the degrees of forbidden marriages and other sexual restrictions in vogue in different human societies have been proposed during the centuries by theologians, historians and anthropologists. The multiplicity of these suggestions constitutes impressive testimony that this most intimate area of human relationships is largely *terra incognita*, where it is wisest to move with extreme caution. They also suggest that modifications in the prevailing social structure, especially in marital patterns and sexual mores, where deep psychological and biological factors come into play, should be introduced only when the need for change is imperative *and where no other procedure is available to meet the problem*. This is particularly true here, where the proposed change would produce a break with the practice of the vast majority of Jews in the world today.

Orthodox and Conservative Jewish leaders have registered their opposition to this new principle. Secular Jews, both in Israel and in the Diaspora, will also be unhappy to see another cleavage within the badly battered Jewish community of our day. They will recognize that this innovation will raise major problems in the future with regard to the status of children descended from mixed marriages where no conversion has taken place and who wish to marry Jews.

Undoubtedly, the Reform rabbinate was well aware of these major roadblocks to the adoption of the patrilineal principle. The motives that led them to take this step are self-evident. The vast proliferation of intermarriages in the United States and throughout the world, not excluding even Israel, represents a drain of human resources from the Jewish community which it can ill sustain, particularly in view of the low birth rate in Jewish families.

Moreover, it may be taken for granted that when a gentile woman marries a Jew, the act represents a friendly attitude toward the Jewish background of her husband. Anti-Semites do not generally preach or practice intermarriage. In addition, the family and the children would be carrying the surname, often clearly Jewish, of the Jewish father. It there-

fore seemed appropriate to Reform leaders to seek to facilitate the entrance of as many of these children of mixed marriages as possible into the Jewish community by the adoption of the patrilineal principle.

However, I am reminded of the rabbinic distinction between two roads, one *kezarah va'arukhah*, "short but long," the other, *'arukah ukezarah*, "long but short." The proposed Reform innovation may seem like a short cut to the replenishing of Jewish ranks, but it suffers from several major drawbacks: If the mother remains non-Jewish, the acceptance of the child as Jewish means building a wall of separation between her and her child. It would introduce a multiplicity of religious and cultural backgrounds into the home and prevent the building of a sense of rootedness and belonging which the home is designed to supply. It is surely not the function of Judaism to break down the unity and stability of the family, which is already threatened on every hand.

If the non-Jewish mother is willing to have her child "raised as a Jew," after which his Jewish status would, at best, be equivocal, it would be far better to persuade the parents to have the child properly converted. This would eliminate one potential source of confusion and grief in the future.

The second step which should be undertaken is to seek to persuade the mother herself to undertake the study of Judaism with a view to her own acceptance of the tradition, so that she and her child might be converted together, thus laying the foundations for a harmonious atmosphere in the home. If she cannot bring herself even to undertake such a course of study, or if she finds herself unable to accept Judaism after study and an exposure to the content of Judaism, then "raising the child as a Jew" would be virtually meaningless in any substantive sense.

Is it too late for the leaders of Reform Judaism to reconsider their ruling? I would hope not. Over a century ago, in 1886, American Reform adopted the famous Pittsburgh Platform in which it denied Jewish peoplehood, authorized the abandonment of most of Jewish ritual and law, and reduced Jews to the dimensions of a religious sect. Fifty years later, in the Columbus Platform of 1936, the Reform Movement gave the world an extraordinary, almost unique, example of moral and intellectual integrity. On the basis of the Jewish historical experience during the past half-century, Reform Judaism publicly reversed its stand. It reaffirmed the peoplehood of Israel and emphasized the importance of ritual and tradition, thus once again entering the mainstream of *Klal Yisrael*.

The intellectual and moral courage which Reform has demonstrated in the past impels me to urge its leadership to reconsider the principle of adopting patrilineal descent and to suspend its operation pending further study and reflection. In an age when lip service is paid everywhere to *Ahavat Yisrael* and *Ahdut Yisrael*, "the love of Israel" and "the unity of Israel," Reform can demonstrate the vitality of these ideals in its life and practice. *Et la'asot* — it is time to act.

Those Entitled To Be Jews

BEN HALPERN

PROFESSOR SHAYE COHEN'S PAPER IS PROPERLY impartial, or methodologically unconcerned, about the controversy that has arisen over the "recent decision of the Reform and Reconstructionist rabbinate to adopt a patrilineal principle for determining the Jewish status of children born of an intermarriage." I doubt whether most of the papers contributed to the present symposium will confine themselves to purely historical criticism of Cohen's hypothesis (that the matrilineal principle was taken up from Roman legal practice by rabbis in the period of the Mishnah). Prof. Cohen argues that intellectual influences and a technical interest in problems of purity and mixtures, rather than the social needs of that ancient time, explain the rabbis' departure from biblical patriliney. Today, the issue clearly arises out of considerations of social need, and, I dare say, most contributors will approach it in terms of their respective general positions on Jewish and social issues.

As a secular Zionist and an occasionally practicing historian, I have no difficulty whatever in accepting the idea that the rabbinical jurists responded to contemporaneous influences and interests in their interpretation of legal texts. I assume without question that jurists and legal scholars who discuss the matter today will do the same — whether or not they are prepared to admit it. My own interests and preconceptions lead me to deal with the current rather than the historical issue, and to approach it on its most general, broadest base.

The decision to recognize children of Jewish fathers as entitled to a place in the community by descent, without further qualification, obviously responds to the new situation of an American Jewry whose sons are intermarrying with non-Jews at a substantial rate. It seeks to ease the way for many marginal men, having options and incentives to become either Jew or Gentile, to choose their Jewish identity without undergoing special tests and procedures. It clearly reflects the sense of many in the community that, in the face of so many factors tending to sap its strength and reduce its numbers, traditional rules that make it harder to be a Jew should be revised.

This is only the latest of numerous demands for adjustment that modern conditions have made upon the Jewish tradition. One should mention, in this connection, the explicit recognition of the legitimacy of civil marriage which Napoleon exacted of his Jewish subjects nearly two centuries ago. The Sanhedrin that he convoked may have stipulated the

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need for a supplementary religious ceremony, for internal purposes, but this did not obviate the possible halakhic complications invited by increasingly prevalent civil marriage. There are certainly a fair number of Jews in all Western countries whose parents, or recent ancestors, were united in civil marriage under rules different from rabbinic practice, and who might be judged “illegitimate” — *mamzerim* — if their antecedents were carefully examined by the Israeli rabbinic courts today. For many years, such problems were tacitly evaded simply by having no occasion (or generally accepted tribunal) to raise an issue about them. We have remained a united community for many decades — at least, in our public aspect — simply by taking at his word whoever identifies himself as a Jew — barring, of course, cases where there is clear evidence of fraudulent intent.

Another historic occasion that raised the issue anew, in an aggravated form, was the enactment of compulsory jurisdiction of the rabbinic courts over the personal status of Jews in Israel. There was now, within the authoritative political structure of Israel, a tribunal committed to apply to all Jews within its jurisdiction traditional rules for permissible marital relations. Until then, observant traditional Jews may have had to guard themselves by discreet inquiry against illegitimate marriages — of *kohanim* with divorcees, or legitimate Jews with *mamzerim* (though it may have been far more common to check whether a pious Jew could safely eat in another Jew’s house); now there were officials duty-bound to check such matters, according to set procedures and regulations. The unity of the Jewish people, so far as it depended on uniform rules of permissible marriage, could no longer be maintained by avoiding public division over such cases, but became subject to publicity and proclamation.

Yet, at first, another set of rules, for the application of Israel’s Law of Return, limited the impact of rabbinical jurisdiction. Here one could benefit from the provisions of the law (governing the rights of Jews to immigrate and be naturalized) upon submitting a good-faith declaration that he/she was a Jew. But political ambitions, exploiting political opportunities, have killed that chance of preserving unity through benign neglect, and subjected the issue of “Who is a Jew?,” on the broadest scale, to injurious attention.

The earlier principle of the Law of the Return, accepting a good-faith self-identification as sufficient evidence of being a Jew, expresses the secular national consciousness that arose in Eastern Europe over a hundred years ago. Its criterion for entitlement to be recognized as a Jew, part of the Jewish community, is that one knowingly shares the Jewish fate. Secular Jews, like others, also have their criterion for being a *good* Jew: not simply sharing, but taking the Jewish fate as a personal commitment, and cultivating the historical consciousness that gives it meaning. One is entitled to be recognized as a Jew, from the secular standpoint, without being a good Jew. Neither Orthodoxy nor Ortho-

praxy nor any other form of positive religious commitment is necessary, as we all know, to make one share in the Jewish fate. To impose such additional requirements — or, for that matter, to make an adequate level of national, historical self-consciousness such a requirement — would be incompatible with the secular nationalist conscience. It is one thing to choose leaders on grounds of their special qualifications; it is quite another to make acceptance into the community depend on them, or use them to block some groups, or unfairly privilege others, in regard to rights and duties that should be equally open to all.

It is obvious where such a principle would necessarily place a secular nationalist in the controversies between the rival religious positions on matters recently in dispute. What would be most desirable would be the institution of civil marriage in Israel. That would remove the compulsion on Jews (and Muslims, and members of other recognized sects) to submit to an authority that they may not inwardly accept, and allow them the option voluntarily to pair off, as they do now, according to the domestic way of life that they are wont to follow. Such a set-up, familiar to American and other Western Jewries, would itself eliminate the difficulties that Conservative and Reform rabbis and laymen encounter in Israel, and it might enable them to arrive freely at some *rapprochement* with Israeli traditions as well. But if this way out is not under discussion, then, certainly, the official recognition that Liberal and Conservative Judaism seek in Israel ought to be supported. It would make a public institution, to be sure, out of religious differences that ought to enjoy the right of private association; it would turn nuanced shadings into sharp-edged divisions. But it would also remove invidious discrimination among Jews and eliminate harmful coercion — and this consideration far outweighs the other.

Much the same arguments apply to the proposal to validate patrilineal descent, and not only inheritance through one's mother, as a title to be recognized as a Jew. A secular nationalist must certainly sympathize with the motives that, one assumes, underpin the decision to adopt this reform. It is possible, of course, that what lies behind it, for some advocates, is fear of the religious vacuum, or the positive religious alternatives that might absorb such persons if the synagogue failed to remove questions of their Jewish legitimacy. More likely, it is not fear of such alternatives but simply the loss to the Jewish community if the synagogue fails to integrate them that is the effective motive. This is a consideration that must count with any concerned Jew.

The proposed reform has its obvious drawbacks — what one might call the side-effects of the therapy. Like any institutional innovation in a previously ill-defined situation, it turns blurry compromises into clearly opposed positions, tacit understandings into vocal disputes. The history of Zionism, too, repeatedly saw pragmatic agreements with non-Zionists turn into ideological conflict with anti-Zionists when the nationalists put forward new principles in explicit, rather than implied, forms. A new reli-

gious thesis is particularly prone to provoke sharp, ideologically rigid counter-statements. Nothing has the intrinsic capacity more openly to divide the Jewish community, formally identified as a religious brotherhood, than an attempt to define the bounds of membership in it in sectarian terms.

Nevertheless, the risks that are undoubtedly being incurred should not be too alarming. Although we figure as a religious community — a single religious community — in the mind of America-at-large, our religious association is socially, not politically, institutionalized. Whatever conflict and division the new measure adopted by the Reform and Reconstructionist rabbis may engender, it occurs in a community already pluralistic in its cultic structure: not a single Synagogue, but some three or four separate denominations. If we are a single community, nevertheless, this fact inheres in our awareness of a common fate, shared with Jews everywhere, and more specially among all American Jews, in their several denominations and other forms of association and interdependence. What counts is our unity on this basis, and whether the reform undermines it.

It is certainly possible that the provocation of this bold departure from halakhah will, indeed, add to the pressures already straining our communal organization. American Jews, not to speak of Israeli and other Jews, are increasingly divided in their stand on social and political issues — the very matters in which a common fate has allowed us to work together effectively in spite of doctrinal and ritual differences. Those differences, however, have produced, in some cases, splits within the Jewish “polity,” the communal organization that represents and acts for the Jews in their relations with others: nineteenth century Germany and Hungary and twentieth century Palestine under the British mandate saw the emergence of separatist Orthodox communities, unwilling to join other Jews in a common association for the protection of common interests. Tendencies to take the same route, which have been noticeable lately in American Jewry, may well be strengthened by the dispute over patrilineal Jewishness.

In spite of such strains, American Jewry will, no doubt, preserve a manageable unity in matters of common interest. The differences among us (which are occasionally exploited by interested non-Jews on particular issues) have far less impact on others than on ourselves. Their definition of “who is a Jew” is usually more liberal and generous than ours — and it is a far from negligible factor in determining the Jewish fate, and who is subject to it. Moreover, in a country where both religious and ethnic organization are private matters, requiring no special public-law sanction, there is not the same pressure for a clean separation. One can avoid offensive association (in some private spheres) with Jews held illegitimate while working with them (in other spheres) where they effectively share the Jewish fate — and the need to apply a consistent principle

to the two cases is not pressing, as they do not come under a single, publicly proclaimed law.

There is another probable effect of the reform that, again, seems to reinforce an already observable American Jewish trend. This is the propensity to seek a position for Jews in American life approaching that of the Quakers or Presbyterians, if not the Episcopalians. Members of those denominations are distinguishable from other Americans less by a distinct communal history (though this was once true of the Quakers) than by their distinct, generally recognized status. Not far beneath the surface of the American Jewish public presence, there is the latent wish to have the same sort of acceptance. What makes this difficult is the too stubborn resistance of Jewish history.

The long chronicle of the efforts of modern Jews to suppress, or sublimate, our history of Exile is an old story, not necessary to repeat. Since the Holocaust, and the subsequent campaign to eliminate anti-Semitism from Christian ritual in the name of ecumenical reconciliation, it has taken a form that hopes to smooth over the sharp edges of Judeo-Christian difference. It is hard to estimate to what extent the recognition of patrilineal descent will affect the lives of intermarried couples and their children, but, conceivably, it might help blur their perception of the special, distinctive features of the Jewish fate.

A common historical explanation of the adoption of the matrilineal principle in Judaism (one not accepted by Prof. Cohen) holds that it was instituted by Ezra on the generally accepted psycho-sociological assumption that mothers, and not fathers, impart family values to their children. Even if the history is rejected, the social psychology of this theory would still command fairly general belief. Certainly today, in spite of the tendency for the nuclear family to be isolated, it is the mother's kin rather than her husband's who are likely to form the wider intimate environment of her children. One effect of any intermarriage is likely to be a blurring of the sense of a distinctive Jewish historical fate; and when it is the father alone who is Jewish, this effect is apt to be reinforced.

As previously noted, the specific added impact of legitimizing patrilineal descent, over and above that of intermarriage itself, or even simple acculturation, is very hard to measure. It would not be surprising to find that it is a very minor incremental effect, as the number of persons involved may turn out to be small. Small or large, it adds to the problem that Liberal Judaism already has of bringing home to American Jews a profounder, more informed sense of their identification with the Jewish fate and history. Yet, whatever the difficulties it may entail, the reform is one that a secular Jewish loyalist can only welcome. It signals an openness to all who choose to be Jews, and to all the forms in which their Jewishness authentically finds expression, which we must applaud.

Patrilineal Descent — An Examination of the Issue

JUDITH HAUPTMAN

SHAYE COHEN'S ARTICLE HAS SHATTERED a number of Jewish myths of long standing. To begin with, he points out that the primary basis for determining the personal status of a child is not matrilineal, as commonly held, but patrilineal. Second, by examining the issue in a historical framework he makes it clear that the reason for assigning non-Jewish status to the child of a Jewish father and non-Jewish mother was not lack of certainty of the father's identity but the Mishnah's general principle (*Kiddushin* 3:12) of punishing a Jew who transgresses the law in marrying someone of unacceptable religious status or different racial stock. Third, Cohen brings to our attention that the Mishnah originally ruled (*Yevamot* 7:5) that the child of a Jewish woman and a gentile or slave father is a *mamzer* and, only later, the Talmud reversed this decision by declaring the child of such a union to be a Jew of unimpaired status. The effect of this leniency (for which Cohen offers no explanation) was to set aside the rule of punishing the child for the parent's sin and make it appear that Jewishness was determined solely by blood. That is, if 50% of the child's blood were Jewish, the child was Jewish, provided the Jewish blood came from the mother. The recommendation that has now been made to determine Jewishness either by matriliney or by patriliney carries this Talmudic approach to its logical extreme.

Many arguments have been advanced in favor of adopting the patrilineal principle, the most frequent being that making the change will result in a net increase of Jews, in particular children of Jewish fathers and non-Jewish mothers who are already being raised as Jews at home and in school. In these families, the mother has not undergone formal conversion even though she has abandoned the practice of her own religion. Acknowledging these children as Jewish would be formally accepting as Jews individuals who are already committed to Judaism and are living Jewish lives.

A second argument in favor of adopting this change is that the law as it stands discriminates against men. The 50% of a child's blood coming from the mother seems to be valued more than the 50% coming from the father.

A third argument, which I read a number of years ago, relates to Russian emigrants who settled in Israel. In the Soviet Union, the govern-

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ment records a person as Jewish if either the mother *or* the father is Jewish. Therefore, many Russians whom halakhah did not regard as Jews still viewed themselves as such, lived Jewish lives clandestinely, and even risked their lives for their Jewishness when requesting a visa to Israel. It seems entirely inappropriate to request of these people to convert formally to Judaism.

As logical as these arguments are, I do not think that they reflect an understanding of the general philosophy of change in halakhah. There are two main issues involved in halakhic development: can halakhah change and, if so, how well is change tolerated? There is no question that halakhah can change. Any openminded student of the Talmud knows that the underlying issue on nearly every page of Talmud is change — reinterpretation of Scripture or Mishnah to meet shifting realities. It is true that change is rarely referred to as such, but still, a comparison of Talmudic Judaism with Mishnaic and Biblical Judaism reveals that enormous changes were made both in terms of development of new laws and abrogation of old ones. Some classical examples can be seen in the laws of interest, cancellation of the loan release, and payment of the *ketubah*. The second issue, how well the system tolerates change, is harder to deal with.

In looking at the recent past, we find that changes can be divided into two groups: those that were made to preserve the integrity of Torah and those that were made to foster its observance. A change made for the second reason was the introduction of mixed seating in the synagogue. In order to make communal prayer more appealing and acceptable and, thus, encourage attendance, mixed seating became standard in Conservative synagogues. Another example of change made to foster observance was declaring the second day of Festivals optional. The logic behind this leniency was that limiting the Festival to one day would enable more Jews to observe it by not working and by attending synagogue services. These halakhic enactments, and others like them, were not made to right a wrong or to remove a discriminatory practice, but to make Judaism more palatable. The classical statement justifying this sort of change is: “*et la’asot lashem heferu toratekha.*”

An example of change made to preserve the integrity of Torah is the introduction of the antenuptial agreement. Before it became common to sign one, if a couple decided to dissolve their marriage, the husband could exort moneys from the wife in consideration of writing her a *get*. Although the law of the Torah which gave writing of the *get* exclusively to the husband probably never intended thereby to oppress the wife, this is what began to happen. The unfortunate situation developed in which law was on one side and justice on the other. And since justice is one of the major principles of the Torah, introducing changes into the laws of divorce became not merely desirable but necessary, in the sense of keeping the system of Jewish law loyal to the same principles espoused by Torah. Note that the antenuptial agreement does not abrogate Torah law

and permit a woman to write a bill of divorce, but, rather, circumvents it by making the marriage contingent upon the husband's fulfilling his responsibilities to write one.

This discussion may seem to suggest that changes may easily be embraced. Not so. All changes in halakhah, whatever their motivation, wreak havoc, at least in the short run, on many individuals who find it hard to adjust and who regard anything new as inauthentic. In addition, a special appeal of religious practice is its preservation of tradition, its continuity and unchangeability. Therefore, making only those changes that are necessary seems to be the best course of action.

We can now pose the question: is it advisable to accept patrilineal as well as matrilineal descent? My answer is no, and for several reasons. First, even if this change were to foster Jewish observance and preserve the integrity of Torah, as its proponents claim it will, I would reject it because it is not necessary. The child of a non-Jewish mother and a Jewish father who wishes to obtain Jewish status always has open the route of conversion. Afterwards, such a person would be regarded as Jewish as someone born to two Jewish parents. Thus, since a solution to the problem already exists, I do not think it wise to introduce a second one, even though it treats the individuals under discussion with greater delicacy. The effects of such a change are too disruptive, and to pay a high price merely to obtain a somewhat better solution is not justified.

Second, the usual result of altering the halakhah is a widening of the schism between the different movements in Judaism, since there exists a great divergence of opinion on the legitimacy of any particular change. On occasion, one has to drive such a wedge for the sake of doing what is viewed as necessary, but it is pointless, and probably detrimental to do so, in order to solve a problem for which an alternative non-divisive solution already exists.

Third, and probably most important, the adoption of the patrilineal principle would confer acceptability upon inter-marriage and thereby totally subvert the goals of the laws of personal status as envisioned by the Mishnah and enunciated by Shaye Cohen. It would reduce the pressure on Jewish men to seek a Jewish mate — either born Jewish or converted to Judaism. For a religion interested in its own preservation to relax restrictions on marriage within the faith is, to my mind, self-destructive. We should remain loyal to the underlying principles of the Mishnah: not that we should punish transgressors of Jewish marital law, but that we should discourage behavior which is inconsistent with Jewish survival. One of the last vestiges of Jewish behavior in families who do not openly observe Jewish ritual is the request by parents of their children not to inter-marry. To relieve parents of the need to make this request of their children does not make sense. But requiring the non-Jewish future wife of a Jewish man to convert to Judaism is a reasonable, if not sure, guarantee of the couple's commitment to live a Jewish life and to raise Jewish children.

It is for these historical, political, and practical reasons that I feel that we should not adopt the patrilineal principle in the case of inter-marriage. What we should do, however, is rethink our conversion ritual and modify people's attitudes toward it. If conversion could be regarded by converts as an affirmation and a celebration of their choice to live Jewishly, and not as a humiliating ritual imposed on an individual by ancient rabbis, then the pressure to adopt patrilineal descent would be greatly diminished. Perhaps, in this era of equality, conversion could become a shared ritual. Both the Jewish husband and the Jewish-to-be wife could attend classes (as is already done in many communities), both could immerse themselves in the *mikveh*, and both could publicly affirm their joint future commitment to Judaism.

Non-Linear Descent

WALTER JACOB

A CENTURY AND A HALF OF MODERN JEWISH study has indicated that Judaism continues to change and adapt itself to new situations. Even those groups which violently object to change and demonstrate their desire to remain static through adhering to the language of the previous generation or the garb of an earlier century, as, for example, the Hassidim, have subtly altered over the years. An analysis of Hassidic sermons and their responsa literature during the last two centuries indicates this clearly.

The only argument within Judaism, then, is about the pace of change and the desirability of some radical experimentation. The Reform Movement stands at one extreme and the *neturei karta* at the other, although this group, and all in between, continue to move, and sometimes at a rapid pace.

The issue of patrilineal descent, and the steps recently taken by the Reform and Reconstructionist movements, represent such a change made for ideological and practical reasons. It is also a classical example of an official change, in this case through the resolution of the Reform rabbinic body, the Central Conference of American Rabbis, coming a good while after the actual change had occurred in the life of our people. This has happened often in Jewish life. Perhaps the most famous example is the decree of Rabbenu Gershom, which confirmed monogamy as the family pattern for European Jews north of the Alps. As Z.W. Falk¹ and others have shown, this pattern had previously been established in the Jewish and non-Jewish community; Rabbenu Gershom's decree did not represent a radical departure from existing practice, but confirmed what had already become widespread and accepted. For this reason, the decree did not need to be renewed, although, theoretically, its force soon expired.

The change from matrilineal descent, in which the child of any Jewish mother is automatically considered Jewish, to non-linear descent, in other words, in which the child of a Jewish mother or a Jewish father would be considered as Jewish, is in a similar category. It forms part of the changing nature of the modern family, both Jewish and non-Jewish. In mid-twentieth century America, both mother and father are deemed to

1. See *Jewish Matrimonial Law in the Middle Ages*.

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have equal rights to their children and similar influence upon them, especially with two working parents. In cases of divorce, custody may go as readily to one parent as to the other, or there is joint custody. Furthermore, as mixed marriages without conversion have increased, the chance of there being a Jewish father is about the same as that of there being a Jewish mother. Our modern decision tries to deal with these circumstances and the problems that they raise. We realize, of course, that matrilineal descent as accepted by tradition had little to do with mixed marriage, but with other sexual relationships between Jews and non-Jews. Such relationships occurred with some frequency during various periods of Jewish history,² but rarely in a permanent married state or at the current level over an extended period of time.

The primary effort of the rabbinic legislation was to save the child of a Jewish mother and non-Jewish father from the debilitating status of a *mamzer* and to integrate the child into the Jewish community. Our primary interest in modern times also intends to deal with the doubtful status of a child of a mixed marriage who may be partially integrated into the Jewish community. In other words, the underlying intent of the rabbinic statute, whether from the period of the Mishnah, the Talmud, Maccabees or Ezra,³ was the protection of the child and his/her ties or potential ties with the Jewish community. A minority people such as ours must protect itself in this way.

We may, of course, see this resolution in the light of Reform Judaism's emphasis on equality between men and women, which has been expressed theoretically since the early 19th century, and does, indeed, provide an ideological basis for our recent action. Yet, until a practical need arose, nothing was done about the matter. After all, such a change could theoretically have taken place in 1815 or 1915, but it did not, as there was no need for it.

The Reform rabbinic body has moved rather gradually to this stance of non-lineal in place of matrilineal descent. In 1947, it adopted a lengthy series of statements on mixed marriage and intermarriage including, among other matters, the acceptance of the child of a Jewish mother or father into Judaism through *brit* and naming or enrollment in the religious school and the successful completion of its course, as was marked by a Bar/Bat Mizvah and confirmation. This meant that, although conversion was implied, no formal act aside from education was necessary, nor was the child's Jewishness questioned during the process of education. No specific ceremony marked the formal entrance of some children to Judaism. This position was reiterated in the 1961 edition of the *Rabbi's Manual*. Clearly, for more than a generation, non-lineal descent has been

2. Louis M. Epstein, *Sex Laws and Customs in Judaism*.

3. See the essays by Shaye Cohen and Aptowitzer, "Spuren des Matriarchats im jüdischen Schrifttum," *Hebrew Union College Annual*, Vols. 4 & 5.

the *de facto* position of Reform Judaism; the 1983 resolution of the C.C.A.R. made it *de jure*.

The need to move from one position to the other is governed less by any theoretical considerations and more by a strong desire on the part of the Reform Movement to have intermarried couples raise their children as Jews, whether the mother or father is Jewish, and thus guarantee a larger number of Jews in the next generation.

We, of course, also find ourselves in a totally different situation than a century ago when a smaller wave of intermarriage took place among the Central and Western European Jewry, specifically the Jewish communities of Germany, France, Austria, Hungary, and England. In all of those lands, intermarriage indicated a flight from Judaism. Even if the individual Jews who contracted the marriages did not convert, they encouraged their children to move in that direction, though there probably were isolated instances of children of mixed marriages being raised as Jews. The situation during the latter part of twentieth century America is precisely the opposite. The vast majority of intermarried couples do intend to raise their children as Jews. Our American society is friendly towards Jews and Judaism; this reality must lead our Jewish community to a different stance on the matter of descent than did the totally different conditions of the past.

We should also remind ourselves that our attitude toward Jews of doubtful descent, or even Jews who had converted to Christianity, has varied greatly through the ages. When conversion to Christianity occurred, it was usually under pressure in a hostile environment. Those converts, however, frequently did little to escape when their situation changed. A large proportion of Spanish and Portuguese Jewry, who had converted to Christianity, when later given an opportunity to flee, chose to remain. Despite this fact, there was a strong division of opinion among rabbinic authorities over several centuries as to how the descendants of such individuals, who eventually made their way to lands where Jews were tolerated and who now wished to reclaim their Jewish heritage, should be treated. Some considered them completely as non-Jews and felt that they should convert to Judaism. Others treated them completely as Jews, and welcomed them back to the community without any public act. A number of intermediate attitudes also existed.⁴ In those instances, spread over the centuries, we faced a problem as severe as intermarriage. The individuals who sought admission to the Jewish community were only nominally Jewish. They had had no Jewish education; their marriages were not Jewish and their Jewish descent was often doubtful. Frequently, several generations separated the last active Jew from those who wished to revert. In other words, under circumstances in which any contact with Judaism was extremely vague, there were authorities who

4. H.J. Zimmel, *Die Marranen in der rabbinischen Literatur*.

willingly accepted such individuals and quietly integrated them into the Jewish community.

Our situation is much clearer. We know the desire of the parents to raise the child as a Jew; we have the support of grandparents, other relatives and the Jewish community to strengthen this Jewish identity. We can, therefore, do no less than did the liberal authorities of the past.

We should also turn to the other part of the resolution of the Central Conference of American Rabbis, which requires acts of identification. Here is an effort on the part of the Reform rabbinate to assure that positive Jewish efforts will be made. The Responsa Committee, of which I am Chairman, has interpreted this strictly, and has sought definite educational or affiliation patterns in the life of the individual involved. Approximately twenty questions on matters related to patrilineal descent have already been asked during this initial year, and a strict interpretation will assure that this aspect of the resolution is taken seriously and will help our general efforts to improve the standards of Jewish life and learning. Of course, it remains to be seen whether such a restrictive effort will be successful. Perhaps the pattern previously established with matrilineal descent will eventually evolve. In other words, there will be a presumption of Jewishness if the individuals so seek it and an effort is made to carry it into practical life. This is the current practice with Russian Jews, both in the United States and in Israel.

When major changes like this one to non-lineal descent occurred in the past, there were conservative and liberal elements which accepted or rejected them. Some authorities in our long history rejected them outright; others accepted openly; occasionally, bitter struggles ensued. We must ask about the fate of this change. Will it be generally accepted? At the moment, in the United States, it is clear that acceptance is probable. The rate of mixed marriage remains high, as does divorce and the dissolution of families along with subsequent remarriage. In other words, there is a great deal of confusion in family life and in regard to the status of children. Frequently, children of several marriages with only one Jewish parent grow up in more or less the same household. A firm religious tie, therefore, is necessary to ensure some basic family solidarity. A clear status will assure religious identification rather than confusion; it will be spiritually as well as psychologically helpful to the child. As long as the child of such unions is educated as a Jew, and participates in Jewish life, he/she will be generally accepted as part of the Jewish community.

Even among the Orthodox, the only additional matter which would need to be performed for complete acceptance — perhaps at the time of marriage to an Orthodox boy or girl — would be immersion in a *mikveh* and formal Orthodox conversion. At that time of life, however, this act would not be ideologically wrong or psychologically debilitating, but would simply occur as a gesture towards the other partner or his/her family. In other words, this change to non-lineal descent, although it appears

major, is less radical than one might think and, so, will make little difference to the Orthodox.

There are other changes in modern life and practice which should, theoretically, be of greater concern to strictly Orthodox authorities. After all, the vast majority of American Jews do not acquire a *get* upon divorce. Half of American Jews are not affiliated with any religious movement, and the percentage is even higher in Europe and Latin America, where many of their marriages and most of their divorces are likely to be highly suspect by anyone who might care to inquire. The same thing has been true of Soviet Jews for three generations. It is clear, therefore, that the status of approximately two thirds of the Jews throughout the world is doubtful and could be called into question according to traditional halakhic standards. That is unlikely to occur as the numbers are so overwhelming. These matters are far more serious, as *mamzerut* can not be changed by immersion in a *mikveh*. It seems, therefore, that this change in Jewish life will be widely accepted and, after the initial period, without question.

Shaye Cohen has indicated that the change to matrilineal descent represented a new attitude caused by historic circumstances that are no longer clear to us. Whether it occurred in the time of Ezra and Nehemiah, the Maccabees, or the Mishnah, may be debated, but clearly this major change did occur. We, at a later time, must be equally realistic and acknowledge the new circumstances of life around us which also demand a change, in this case to non-lineal descent. In this way, we shall help the growth of Judaism and follow the pattern of change begun by the Bible and continued to our own day.

There Is No Problem Of Descent

LOUIS JACOBS

FROM THE HISTORICAL EVIDENCE marshalled by Professor Cohen it would appear that the change from the patrilineal to the matrilineal principle for the offspring of mixed unions of Jew and gentile took place in the early Tannaitic period. The central problem is why the change was introduced only here while the older principle was retained with regard to status, kinship and succession where both parents were Jews.

Historians, following their natural bent, have sought to discover the reason for the change in historical circumstances. Cohen is surely correct in his criticism of the theories advanced by earlier historians and, considering these theories to be implausible, he advances two new theories of his own: either the Tannaim were influenced by the Roman legal system or there took place an internal development on the analogy of animal cross-breeding in connection with the laws of *kilaim*. With regard to the first theory, Cohen himself admits the paucity of evidence for Roman influence. Boaz Cohen (*Jewish and Roman Law*, New York, 1966, pp. 133-145) noted the resemblances between Roman law in this matter and the law of the Mishnah but circumspectly refers only to "some interesting parallels." Moreover, even if the Rabbis were familiar with the Roman law, they might have reacted to it by preserving the patrilineal principle, holding fast to their own system. It has been suggested, for instance, that the absence of legal adoption in Rabbinic law despite Biblical precedents and the high value placed on one who rears an orphan as his own child, is in conscious reaction to the Roman system. This, too, is far from certain but it is unlikely in our case that the Rabbis would have allowed the influence of Roman law to effect a change of so far-reaching a nature.

Cohen's *kilaim* theory is novel and ingenious but borders on the pulchritudinous. Whether a mule is a horse, a donkey, or a separate species is a quasi-biological question, i.e., what is the legal definition of such a hybrid. It has nothing whatsoever to do with patrilineal or matrilineal descent any more than does the similar discussion (Babylonian Talmud *Yoma* 74a-b) of whether a *koy* is a *hayyah* or a *behemah* or a separate species. The legal definition depends on whether the mule is a horse or a donkey, not whether its descent from a horse or a donkey is determinative of its status. If it is decided, for example, that the mule is a horse this is hardly because it has the *status* of its father, if the father is a horse. It is, rather, that the mule has the degree of "horsiness," as it were, to be legally defined as a

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horse. When, on the other hand, the question is being considered of whether a child of a mixed union has the status of its father or its mother this has nothing to do with biology, with the genes, as we now say, as if the law were concerned to determine whether or not there are sufficient Jewish genes for the child to qualify as Jewish. The Rabbis were interested in mixtures, as Cohen remarks, but they did not mix their categories and their interest was not in mixtures *per se* but in the subtle questions of legal definition to which mixtures give rise.

Whenever Rabbinic law has developed differently from Biblical or pre-Rabbinic law (though, generally, in these instances the Rabbis did not formally acknowledge that there had been any development), historians seek to discover the causes and are usually successful in suggesting plausible reasons for the development. Only the fundamentalist who, as Cohen says, dogmatically rejects the whole notion of development will refuse to tread this road paved with the massive stones provided by Zunz, Krochmal, Frankel, Rapoport and their successors. Cohen, for instance, argues very convincingly that a development did take place from the patrilineal to the matrilineal principle. But this should not lead to the conclusion that development is always due to adaptation in response to external stimuli. Rabbinic law, after all, does possess an inner logic of its own. To be sure, historians have demonstrated that, frequently, the formal logic of the law is only a facade and that the real causes at work were external to it. Nevertheless, it is a mistake to conclude that changes in the law never occurred in obedience to pure logical theory by means of which the law receives elaboration and qualification. Where the law is patently at variance with its own logic, historians do well to try to uncover the motivations — conscious or unconscious — of the Rabbis in effecting the changes. Far greater caution needs to be exercised if the law and its development is perfectly intelligible according to its own inner processes. It seems to me that on the question of patrilineal versus matrilineal descent there is no need at all to look for “reasons” (in any event, the reasons given are very unconvincing). No “reason” is required, since the non-application of the patrilineal principle in cases of mixed parentage presents no problem and is reasonable in itself. As the Brisker school often puts it, the best solution to a problem shows that there was no problem in the first place.

There is, in fact, no problem at all why the Rabbis (or, if the change took place in the pre-Rabbinic period, their predecessors) should have been driven by sheer logic to conclude that the patrilineal principle must be limited to internal relationships. The key verse in this connection is *by their families, by their fathers' houses* (Numbers 1:2). But it seemed eminently logical to limit this principle to those unions which take place within the “families” of Israel, within the Israelite “clan.” A child born of a Jewish father and a gentile mother cannot be given the status of the father since the patrilineal principle is stated only with regard to unions within the clan. How can the father who steps out of the clan bestow a clan status on

the child whom he sires? Moreover, incidentally, the patrilineal principle is not limited to Jews. Gentiles, too, have a pedigree, or, at least, that is stated without dissenting voice and with Scriptural support in the Babylonian Talmud (*Yevamot* 62a; *Bava Qama* 15a). But there is no such concept in Rabbinic thought as matrilineal descent (*cf. Bava Batra* 109b, quoted by Cohen, "the family of the father is regarded as the family; the family of the mother is not regarded as the family"). The child of a Jewish father and a gentile mother is not a gentile because of the application of any matrilineal principle. There is no such thing (and the term used in our discussion is, consequently, very imprecise and can be used only because it provides an adequate shorthand). He is a child without Jewish parentage since the patrilineal principle cannot operate for a union carried out beyond the limits of the clan. The child is not a gentile because his mother is a gentile but because the only way a child can be born as a Jew is for him to have the Jewishness of his father transmitted to him and this cannot happen where the union is outside of the clan limits. Thus, for the Rabbis, there is no switch here from a patrilineal to a matrilineal principle. The patrilineal principle still stands, only it cannot operate in this instance.

Conversely, the child of a gentile father and a Jewish mother cannot have applied to him the patrilineal principle as operating for gentiles since, in siring the child, the gentile father has stepped outside of *his* clan. The child is not a Jew because his mother is a Jew (since there is no matrilineal principle). Logic must seem to demand that such a child should be neither a Jew nor a gentile. He should not be a Jew because there is no matrilineal descent and he should not be a gentile because the gentile patrilineal principle cannot operate. But since there is no such category the child cannot be left in limbo. Jewish law has to have something to say regarding the status of every human being. A new status has to be found for him, which, according to the Mishnah, is that of a *mamzer*, a status already found in the law, into which he can be slotted, as it were, despite the difference between him and the *mamzer*. But the law of *mamzerut* applies only to Jews and, hence, he is given the status of a Jew. The final ruling, contrary to that of the Mishnah, is that he is not a *mamzer*. Why, then, is he a Jew? The answer seems to be that, since he must be given one status or the other and he has been born to a Jewish mother, he is given the status of a Jew. But he is not a Jew because he has been *conceived* by a Jewish mother (as he would have been if matrilineal descent really came into operation) but simply because he emerged from a Jewish womb.

If the reason why the child of a Jewish mother and a gentile father is Jewish is because of the matrilineal principle, why should the Mishnah have suggested that he is a *mamzer*? If the matrilineal principle operates, the child is a Jew like any other Jew. But if, as we have suggested, that in this instance there is a child who cannot conveniently be fitted into any status and for whom, nonetheless, some status has to be found, the nearest status is that of *mamzer*. The Jerusalem Talmud (*Qiddushin* 3:14, 64d)

records an opinion that the child is neither *kasher* nor *pasul* but *mezoham* ("tainted," which is not a legal category at all). He cannot be declared completely *kasher*, on this view, since he does have a gentile father, physically if not in law. Nor can he be declared *pasul* since he is not, in fact, a *mamzer*.

If this analysis is followed it all fits beautifully together and there is no reason to seek causes, mysterious or otherwise, for alleged mysterious effects. Occam's razor is a useful tool for historians as well as philosophers. What happened was not a change from a patrilineal to a matrilineal principle but a limitation imposed by logic on the former. The question why the patrilineal principle does not operate for unions outside the clan while it does operate for those within the clan is meaningless. Precisely because it is a clan principle it cannot operate for unions outside of the clan. Within each clan, Jewish and gentile, it does operate.

Once the law had been developed in this way the attempt is made to discover it in the Scriptural verse (Deuteronomy 7:3-4) quoted for the purpose in both the Bavli and Yerushalmi, an attempted derivation that is, as Cohen says, "not entirely clear." Leaving aside the complicated question of which came first, *generally*, the *derashah* or the law "derived" from it (see the summary in I. Heinemann: *Darkhey ha-Aggadah*, Jerusalem, 1974, Introduction, pp. 1-14), here it would certainly seem to be the case that the *derashah* is for the purpose of discovering in Scripture that which had long been attained by logical reasoning.

Cohen, in his concluding remarks, argues that history and Halakhah are autonomous disciplines so that his findings as a historian have no consequences for the practical issue of whether a modification of the law can, or should be, introduced. However, at the beginning of his essay, he informs us that the Reform movement has recently decided to adopt a "non-linear" principle, according to which a child of a non-Jewish mother would be considered a Jew if raised as a Jew. Whether or not the matrilineal principle should be retained, Cohen leaves for others to determine.

This approach of non-involvement in practical decision-making has long been typical of historians of the Halakhah, either because they fear that involvement may compromise their scholarly objectivity or because they modestly aver that no scholar can be expected to have skill and competence in more than one field. In other legal systems, too, legal historians are rarely acknowledged jurists. Yet, while one can go along with the idea that the law has a life of its own, following its own precedents, and that history should not have the determinative voice in halakhic decisions, it is hard to see why it should be denied any voice. To put it bluntly, if the researches of the historians have made it seem extremely plausible that certain laws were not given directly by God to Moses at Sinai but have developed gradually over the ages — the stages in the development having been traced — why should this fact not be used as an encouragement for further development where such is needed? This was the topic dis-

cussed in the Gordis paper in the Summer 1979 issue of JUDAISM and continued in the symposium on Jewish Law in the Winter 1980 issue.

It is a reasonable principle that a well-established law, accepted unanimously and universally for almost two thousand years and that is at the heart of Jewish self-definition, should be changed only if there are the weightiest religious and ethical reasons in favor. I cannot claim an awareness of all the arguments for change in the matter of matrilineal descent but those that I have seen have little weight. Why is the change advocated and what particular change is contemplated? I hope it is not impertinent, for someone writing thousands of miles distant from the great country in which the women's liberation movement has made such rapid strides, to express astonishment that the clamor to change an ancient law which makes Jewish status depend on the mother should have originated in that very country. Is it being advocated that a child should be considered Jewish when either of its parents is Jewish on the grounds of fair-play? In that event, why should parenthood come into the question at all? Is there not a largely undetected move towards a Christian-type conversion by a profession of faith vastly different from the theology of Jewish peoplehood? And would those who advocate this type of approach also argue that the halakhic principle (itself the result of a long development of the law), "once a Jew always a Jew," be abandoned so that, just as a gentile becomes a Jew by declaring that he is such, so a Jew who declares that he is no longer a Jew ceases to be one? There are theological questions of greater moment than those of pure halakhah and the implications are frightening. We should not be scared of the consequences if our aim is to redress a great wrong, but can it seriously be held that the application of the matrilineal principle has been responsible for the perpetration of a great wrong now to be redressed by valiant iconoclasts?

To sum up. Cohen has made his case. There has been a development of the law in these instances from Biblical and pre-Rabbinic times. The attempt to find reasons for the change, however, has proved to be elusive and is quite unnecessary since it can be explained entirely economically by the logic of the law itself and is typical of Rabbinic thinking in general. But the development in the law had already taken place before the redaction of the Mishnah at the very latest. With the exception of the Rabbi in the Jerusalem Talmud (*Qiddushin*, 3:12) who permitted the child of a gentile mother and Jewish father to be circumcised on the Sabbath and whose opinion was vehemently rejected, the law is accepted unanimously in both Talmuds. It is recorded as the law in all the Codes without dissenting voice and has been the universal norm in all Jewish communities. For such a law to be changed, only the weightiest religious and ethical advantages will suffice and it is difficult, indeed, to discover any such in the change in this particular instance. To change this particular law would strike at the heart of the whole halakhic process and would involve a theological as well as an halakhic upheaval. And for what? The potential loss is great. The gains, if any, are few and the price is far too high.

The “Matrilineal” Principle — a Comment and a Statement

IMMANUEL JAKOBVITS

PROFESSOR'S COHEN'S HISTORICAL ANALYSIS, even if his arguments and conclusions were tenable, is utterly irrelevant to the contemporary debate on the status of children born to inter-married parents. Before I demonstrate that irrelevance, just a few random comments on the paper:

“The matrilineal principle is at the centre of the perennial Israeli debate on the topic ‘Who is a Jew?’.” — Not at all. It is neither at the centre nor at the periphery. That debate deals solely with the recognition or non-recognition of *conversions* carried out under non-Orthodox auspices. The new element of the Reform decision to allow children born to a Jewish father and a non-Jewish mother to opt for Jewish status *without conversion* does not affect the “Who is a Jew” controversy, i.e., the arguments for or against amending the existing Law of Return (which leaves “Jews by conversion” undefined).

“Conversion to Judaism did not yet exist . . . in pre-exilic times” — Not even of Ruth? Or was she post-exilic?

“How the Talmud derives the matrilineal principle from these verses (Deut. 7:3-4) is not entirely clear.” — Perhaps a look at Rashi on these verses might help.

“According to the *Mishnah*, the offspring of a Jewish mother and a gentile father is a *Mamzer*.” — Not so; it is Jewish, as previously stated correctly by the author himself.

Cohen's own fanciful suggestion that the Jewish matrilineal tradition may derive from the Roman distinction between free citizens and slaves, or from the analogy between children of mixed marriages and mules born of mixed animal breeds, hardly warrants refutation, and would, in any case, have no bearing on the accepted rules of Jewish law in practice.

Of course, Cohen admits this when he provides a negative answer to his question, “Does my analysis have Halakic implications?” But the reasons for this conclusion are not those he gives, viz., because “history and Halaka are autonomous disciplines, each with its own methods”, and because “the jurist seeks to determine the law, the historian seeks to determine the truth. The two need not coincide.” Both these statements are

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highly questionable in logic, and completely unacceptable to those who respect the historicity, let alone the authenticity, of Halaka.

The irrelevance of the entire “analysis” to the present-day debate lies elsewhere altogether. It is determined by two indisputable factors:

First, whatever is the historical origin of the matrilineal principle — whether it goes back to Moses, Ezra or to some “rabbinic innovation of the first or second century” — it cannot affect the validity of the principle. As Maimonides makes clear in his *Introduction* to the *Mishneh Torah*, the ultimate authority of Talmudic law derives from its universal acceptance among Jews:

Regarding all matters in the Babylonian Talmud, the entire House of Israel is obliged to comply with them, and one compels every city and every community to accept all the customs, decrees and enactments laid down by the Sages of the Talmud, *because the whole of Israel endorsed the decisions of the Talmud.*

The uncontested and universal practice of defining Jewish status by the mother itself confirmed this definition as the authentic norm of Jewish law, quite irrespective of origin. Even if some historical or archaeological research were to discover quite definitely some contrary opinion, it could no more influence our current practice than the present-day observance of Yom Kippur in the Jewish calendar would be affected by even the most authentic discovery that some scholar in the remote past had calculated Tishri 10th to be on a different day from that now commonly observed by the entire House of Israel. No Jew in his senses would suggest that such historical evidence should make different sections of our people observe Yom Kippur on different dates, on the grounds that the traditional calculation was no longer reliable and subject to dispute. Such reasoning would defy the most elementary axiom of the halakic process.

Second, origins and even authenticity apart, millions of Jews faithful to the traditional definition will never be prevailed upon to accept as Jews the children born to a non-Jewish mother without proper conversion. This being a fact which no-one will question, the attribution of Jewish status to such children can only serve to create two classes of Jews who will neither recognize nor marry each other as such. The resultant aggravation of Jewish disunity is incalculable. Moreover, it is bound to compound enormously the havoc already created by widely divergent attitudes to conversion, causing immense human suffering. By by-passing conversion altogether, countless children thus affected, on growing up, would face the traumatic prospect of discovering that they are debarred from marrying any Jew who respects the validity of the Jewish tradition. To raise such children with false expectations is an act of deceit and of inhumanity. On encountering their ordeal later in life, they will be little comforted by the assurance that some historical analysis justified the breach with tradition that was responsible for their disability.

An Halakhic Perspective on an Historical Foundation

JOEL ROTH

AT THE END OF HIS ARTICLE, PROF. SHAYE J. D. Cohen alludes to one of the most difficult aspects of the halakhic decision-making process. His final sentences beg for some answer to the question: Are there any guidelines within the halakhic system that can aid the modern *posek* in determining when “the data provided by the historian, the sociologist, the economist, the politician, etc.” cease being merely *potentially* relevant to the law and become *actually* relevant to it? When do the results of modern, historical-critical approaches to the study of Jewish tradition constitute sufficient grounds for overturning legal precedent (read: halakhic reform)?

The issues are most relevant today to *posekim* of the Conservative Movement because only they make any conscious attempt to achieve a delicate balance between the weight of halakhic precedent and the legitimate admissibility of new data as factors in decisionmaking. The issues are crucial because too many halakhists of the Conservative Movement regularly seem to lose sight of Cohen’s accurate assertion that “it is the jurist who makes the decision,” and, as a result, they illegitimately elevate the potentially significant new data to actual significance.

In the ninth chapter of my forthcoming book, *The Halakhic Process: A Systemic Analysis*, I refer to these new data as “extra-legal sources,” and deal at length and in detail with these very issues. This response to Prof. Cohen’s article deals with them only briefly, and as applied to the matrilineal issue.

Assuming that Cohen’s thesis is correct, he has succeeded in uncovering the historical sources of the matrilineal norm. All norms, in fact, have historical sources, which are critical and influential up until the point when they result in the actual promulgation of the norm. Once a norm has been legally promulgated, however, its historical sources fade into legal insignificance.¹ In our case, “the influx of Roman ideas” and/or the feelings of the rabbis about “mixtures of all sorts” were the critical factors influencing the promulgation of the matrilineal norm. Once promul-

1. On historical sources of law, see P.J. Fitzgerald, *Salmond on Jurisprudence*, 12th edition (London: Sweet and Maxwell, 1966), p. 109ff., and M. Elon, *Jewish Law* [Hebrew] (Jerusalem: The Magnes Press, 1973), vol. I, p. 210ff.

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gated in the Mishnah, however, the matrilineal norm exists and functions legally completely independent of the historical sources that influenced its promulgation in the first place. From the perspective of the law, the offspring of a non-Jewish woman is not Jewish, and it makes no difference whether Roman ideas are still in vogue or whether the rabbinic aversion to mixtures still prevails.

For the strict legal positivist, the historical sources of a norm never can become legally significant again. In my opinion, however, halakhic literature, from the talmudic period on, reveals that it is not so within the halakhic system.² There are circumstances in which historical sources can again become legally significant and can result in the overturning of precedent and even in more radical halakhic reforms.

Before proceeding to define the circumstances, it must be pointed out that modern, historical-critical scholarship of Jewish tradition tends to reveal the historical sources of norms. In many instances, including the matrilineal norm, the historical sources had either long since been forgotten or may never have been known (perhaps even to the promulgators themselves whose motivations may have been completely unconscious). What Prof. Cohen has done is to read the sources of Jewish tradition carefully to see if they always reflected the matrilineal principle. Finding that they did not, he dated the promulgation of the norm and sought to hypothesize reasonable suggestions to account for the influences that led to its promulgation. (It is interesting to note that if he had discovered that all of the sources did reflect the matrilineal principle he would probably not have been able to reveal its historical source.)

I have been able to find two recurring patterns in halakhic literature that create a legally significant nexus between historical sources and promulgated norms. The first can be stated as follows: When the historical sources of a norm account not only for its original promulgation, but remain the sole, reasonable on-going justification of the norm, and the historical sources are judged to be either inaccurate or inapplicable, they become legally significant and allow for (but do not compel) the modification, correction or overturning of the norm to which they gave rise.³ A hypothetical example will clarify the pattern. If a norm is not only promulgated on the premise (or assertion) that the sun revolves around the earth, but that premise remains the sole, reasonable on-going justification of the norm, the fact that it is scientifically uncontestable that the earth revolves around the sun elevates the inaccuracy of the original historical source to legal significance, and allows for the modification, correction or overturning of the norm. If, however, the original historical

2. See my brief response to Rabbi Alan J. Yuter, "A Rejoinder," *Conservative Judaism*, XXXVI, 3 (Spring 1983): 66.

3. I am fully aware of the fact that words like "sole," "reasonable," "inaccurate," and "inapplicable" are far from objectively quantifiable. That proves only that there can be legitimate halakhic controversy, but does not prove that every disagreement *must* be legitimate.

sources of the norm do not constitute the sole, reasonable on-going justification, as might be indicated by the addition of subsequent layers of new meaning, interpretation or significance to the norm, the original historical sources remain legally insignificant. Thus, for example, to advocate the abolition of Passover on the grounds that its historical source is a pagan rite of spring would be an illegitimate halakhic argument because it would elevate historical sources to legal significance only by failing to take into account that the original source did not remain the sole, reasonable on-going justification of the norm.⁴

Let us, then, subject the proposal for change in the matrilineal norm to analysis on the assumption that it is being advocated on the basis of this nexus pattern. One could argue against a change in the norm for the following reasons:

1) One could claim that the laws of *kilayim* continue to provide an acceptable ideological context (historical source) for the matrilineal norm. That is, the original historical source is neither inaccurate nor inapplicable, and still continues to justify the norm predicated upon it.

2) One could claim that even if the original historical source is inaccurate or inapplicable, it is not the sole, reasonable on-going justification of the norm.⁵ Even if the natural closeness between mother and child is not the original historical source of the norm, it is acceptable now as a cogent reason for leaving the norm unchanged. Cohen himself rejects the intimacy of motherhood only as the original historical source of the norm, not as an acceptable new layer of interpretation. Especially since the ancients themselves recognized the intimacy of motherhood there is no reason that this layer of meaning cannot be added by moderns as a new justification of an established norm.

3) One could argue that even if the intimacy of motherhood is rejected as a reasonable new justification of the norm, and even if the original historical source is inaccurate or inapplicable, resulting in the elevation of the historical source to legal significance, that elevation merely *allows* for, but *does not compel*, modification of the norm. In the case of matrilineal descent there is compelling reason to leave the norm intact even though modification might legitimately be considered. Since it is clear beyond question that the overwhelming weight of precedent since the second century CE favors matrilineal descent, the onus of proof falls upon those who advocate overturning precedent. And “proof” does not mean merely demonstrating that some other position has ever existed among Jews, but providing cogent reasons for overturning the precedent. In the absence of compelling reasons for change, precedent stands even when the historical sources might be elevated to legal significance.

4. This type of error in halakhic reasoning is often called “the genetic fallacy.”

5. Recommending modification of the norm on the sole basis of the inaccuracy or inapplicability of the historical sources would be an instance of “genetic fallacy.”

In this specific case, the advocates of change must provide convincing considerations that will outweigh the negative, chaos-inducing and disastrous results for *kelal yisrael* that would surely follow from declaring Jewish an entire, growing, class of people who will not be considered Jewish by large segments of the Jewish people. If advocates of change can cogently demonstrate that the historical sources are inaccurate or inapplicable, *and* that there are no acceptable new layers of meaning applicable to the established norm, *and* that there are compelling positive reasons for changing precedent that outweigh the clear and unavoidable negative results, their view can have halakhic legitimacy. To justify a change on the primary grounds that a precedent for patrilineal descent exists from before the second century CE is to confuse history with *halakhah*, and that is precisely what Prof. Cohen so wisely cautions against at the end of his essay.

The second recurring pattern creating a legally significant nexus between historical sources and promulgated norms can be stated as follows: When compliance with a norm whose historical sources are yet applicable entails inevitable negative results unforeseen or unimaginable at the time of the promulgation of the norm, and those negative results outweigh the positive value of compliance with the norm, the historical sources and their previously unforeseen or unimaginable consequences become legally significant and allow for the modification, correction or overturning of the norm to which they gave rise. Again, a hypothetical example will clarify the pattern. If a norm mandates the eating of a certain food at regular intervals because it adds joy to the occasions on which it is eaten (historical source), and it still does so, yet it becomes known that the food is highly carcinogenic (a fact unknown or unimagined by the promulgators of the norm), the negative results of cancer outweigh the positive value of the joy, and the historical source with its unanticipated consequence becomes legally significant and allows for the modification, correction or overturning of the norm to which it gave rise. If, however, the negative results do not outweigh the positive value of compliance with the norm (even if this value is itself new and unforeseen or unimagined by the promulgators), the original historical sources remain legally insignificant.

I suspect that proponents of change in the matrilineal norm might argue as follows on the basis of this nexus pattern. There are negative consequences to compliance with the matrilineal norm that were unforeseen and unimaginable to its promulgators. It could never have occurred to them to think that the percentage of Jews who would intermarry would be very high. They could never have fathomed the great loss in numbers of the Jewish people that we are witnessing today. For them it was far preferable to stand against intermarriage than to attempt to accommodate to it by "adopting" as Jewish the offspring of a Jewish male and a gentile female. For us, however, these negative consequences outweigh the

positive value of compliance with the norm, and the nexus is created between historical sources and law, allowing for modification of the norm. Indeed, the modification required is not even the adoption of an earlier norm, namely, patrilineal descent. The replenishing of our decimated numbers and our desire to “bring close” those who have strayed from the fold require us to adopt a completely unprecedented solution, declaring Jewish the offspring of either a Jewish mother or a Jewish father.

Theoretically speaking, the non-fundamentalist opponents of change in the matrilineal norm will not deny that the negative consequences exist, and that they were unforeseen and unimaginable to the promulgators of the norm. Their opposition will be the assertion that the negative consequences of compliance with the norm do *not* outweigh the positive values of compliance with it. Several responses will probably be as follows:

1) Numbers aren’t everything. There is much to be said in favor of potential quality as against simple quantity. Given the factor of the intimacy of motherhood, it is unlikely that significant numbers of children of gentile mothers will be very dedicated to traditional Jewish values and especially to traditional Jewish observances. How likely is it, after all, that a Jewish father who was willing to violate a cardinal tenet of the faith by intermarrying in the first place would exert so great a counterbalance to maternal influence as to result in a committed Jewish child? Indeed, for whatever reason, the Jewish father obviously either did not try or was unsuccessful in convincing his non-Jewish wife to adopt an halakhically acceptable resolution through conversion to Judaism. Furthermore, for those Jewish male-gentile female couples who *seriously* want their children to be Jews there already exists a simple (particularly for infants) and universally acknowledged alternative, namely, converting the children to Judaism.

2) Even if one were to claim that the potential for quality is as great among the offspring of Jewish male-gentile female unions as among the offspring of gentile male-Jewish female or Jewish male-Jewish female unions, the negative consequences of modifying the matrilineal norm would far outweigh the negative consequences of compliance with it.⁶ Imagine the disastrous consequences, eternal and virtually irremediable, that would result from change in the matrilineal norm. As divided as the Jewish people has been over the ages, on one thing we have been united and clear, to our benefit: only the offspring of Jewish females are Jewish by birth; all others require conversion in order to become Jewish. Because of that unity, Jews of any persuasion or proclivity have been able to marry one another without the trauma of discovering that some consider them

6. Note the similarity between this argument and the third response to a justification of change on the basis of the first nexus pattern, above, pp. 64-65.

Jewish and others do not. We already have an inkling of how disruptive this type of problem is to the Jewish people from our new experiences with non-halakhic conversions. Why compound the problem a hundred-fold by introducing the same problem into the definition of native-born Jews? Is not the preservation of this minimal level of unity among Jews far preferable to the opening of the floodgates to a future racked with divisiveness and uncertainty? Preserve the unity by insisting on the conversion of non-Jews.

3) Even if the second nexus pattern were truly applicable to this issue, what do we achieve for the enhancement of respect for, and obedience to, Jewish law by modifying long-standing halakhic precedent for the sake of those whose concern for and commitment to halakhah is either minimal or non-existent anyway? Is not the advocacy of change in the matrilineal norm for the sake of those so unconcerned with halakhah the equivalent of advocating the abolition of the prescriptions and proscriptions of *Shabbat* or *kashrut* in order to be able to claim that Jews are obeying the laws of *Shabbat* or *kashrut*? We must demonstrate our commitment to halakhah by taking it seriously. Indeed, if we take halakhah seriously and are so concerned about the negative consequences of intermarriage, perhaps we should advocate a more strict position and modify the matrilineal norm to require that both parents be Jewish before considering the offspring Jewish.⁷

In sum, then, opponents of change in the norm will argue that the negative consequences of compliance with the norm do not outweigh the positive values of compliance with it and, even more, that the negative consequences of modifying the norm far outweigh the negative consequences of leaving it intact.

Personally, I do not believe that proponents of modification in the matrilineal norm can offer arguments that would be convincing enough to claim that the historical sources have again become legally significant. If neither nexus pattern truly exists, the historical sources remain legally insignificant. Shaye J.D. Cohen is correct. Does his analysis have halakhic implications? The answer is no.

7. As admirable as the motivations of such a recommendation might be, it is probably not much more defensible halakhically when recognizing as Jewish the offspring of gentile females and Jewish males. The negative results of broadening the class of non-Jews by the inclusion in it of so many who would be considered Jewish by existing precedent are legion. Some would demand a *get* for the dissolution of a union between a "non-Jewish Jew" and a biparental Jew, and others would not; some would consider the offspring of a "non-Jewish female Jew" and a biparental male Jew as Jewish, and some would not; converting "non-Jewish Jews" to Judaism would change their halakhically precedented status as Jews to the status of converts, which itself has halakhic implications. Thus, in my opinion, the positive results (though not perfect) of compliance with the existing norm outweigh the positive results of modification of the norm, even though the motivation behind the recommendation is highly praiseworthy.

Patrilineal Descent: A Sociological View

SOL ROTH

THE DECISION BY THE REFORM RABBINATE to revise classic criteria of Jewish identity brought tremors to the Jewish community and has generated a great deal of heated debate. The action was construed by many to mean that Jewish status was being conferred on the offspring of a Jewish father and non-Jewish mother. A variety of issues of a halakhic, historical and sociological nature emerged with force as a result of this decision. All are important, but I will focus on the sociological — and for two reasons.

In the first place, the sociological approach offers a better basis for the resolution of the controversy sparked by this decision. Reform's partial redefinition of Jewish identity touches on two major concerns of the traditional Jewish community. It is incompatible with halakhic standards which assign Jewish identity to a child of a mixed marriage only when the mother, but not when the father, is of Jewish origin. In addition, the result of this revision may well be the creation of two communities so that the members of one (that which defines itself by traditional standards) will not be able to acknowledge the claims to Jewish identity of those who belong to the other. Such a set of circumstances has serious social consequences that bear upon the question of Jewish survival. Now, while there is no common ground among the various segments of the Jewish community on the question of halakhah, all agree that Jewish survival is a paramount social imperative. Hence, a discussion from a sociological standpoint offers a greater opportunity for a meeting of minds.

Secondly, the distress experienced in the traditional Jewish community as a result of the redefinition of Jewish identity derives, primarily, from sociological considerations. Parents are concerned that, when their children cultivate serious romantic relationships, they may not discover, until it is too late, that the mates whom they have chosen are not Jewish according to traditional standards. The consequences can be heartbreaking. Many are distressed by the prospect that the proliferation of individuals whose claim to Jewish identity is based on the application of Reform principles will bring serious confrontations into Jewish life. Energies better spent in the defense of the Jewish community against those who seek its injury will, instead, be invested in exhausting conflict between groups both of whom claim to belong to the Jewish community. The prospect that such a situation might eventually be transported to the State of Israel

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is particularly disconcerting. It is not theology in the form of halakhah, therefore, but sociology that explains the severity of the reaction of the traditional Jewish community to the innovations introduced by the Reform rabbinate. Hence, it is the sociological aspect that will occupy our attention.

I

One advantage that flows from the sociological approach is that it enables us to avoid the problem of making clear the meaning of the resolution adopted by the Reform rabbinate, afflicted as it is with — perhaps even intentional — ambiguity. The resolution declares that “the child of one Jewish parent is under the presumption of Jewish descent” and that “this presumption of the Jewish status of the offspring of any mixed marriage is to be established through appropriate and timely public and formal acts of identification with the Jewish faith and people.”¹ What is the meaning of “presumption”? Is the child Jewish at the time of birth or is it not? Jewish identity, the resolution declares, must also be established by appropriate acts. What is the meaning of “established”? Are the acts to be construed as having the force of *conversion* (Reform style, of course, that is, they do not conform to traditional requirements), or are they to be interpreted as *evidence* that, at the time of birth, the status of the child was, indeed, Jewish? In other words, given that a gesture of identification was, indeed, performed, is the child Jewish as of the time of the gesture or as of the time of birth?

There is an important difference between these two interpretations. If the gesture functions, in some sense, as an act of *conversion*, then we have, in the case of an offspring of a mixed marriage, neither matrilineal nor patrilineal, but non-linear, descent. If it merely serves as *evidence*, then the principle of patrilineal descent becomes part of the Reform criteria for Jewish identity. Shaye J.D. Cohen seems to characterize the resolution as affirming non-lineality. He writes, though perhaps with some reservation (the phrase “non-linear” appears in quotation marks), “The reform movement has recently decided to adopt a ‘non-linear’ principle, according to which a child of a non-Jewish mother would be considered a Jew if raised as a Jew.”² Many, however, read the resolution to mean that the appropriate act of identification merely constitutes *evidence* that the child possessed Jewish status as of birth, in which case the resolution affirms the principle of patrilineal descent. From a sociological standpoint, this difference — as important as it may be to halakhic and historical studies — is not crucial. In either case, Reform has canonized novel criteria for Jewish identity intended for use in a process of active

1. From the Report of the Committee on Patrilineal Descent adopted by the Central Conference of American Rabbis at its annual convention, March 15, 1983.

2. *Ibid.*, p. 1.

expansion of the Jewish community. I will, however, identify the principle as patrilineal because I believe that this nomenclature reflects more accurately the intent of those who adopted it.

II

The seriousness of the action taken by the Reform rabbinate will be understood adequately only if the sociological perspective is adopted. The question that is put consistently and with vigor to the traditional opponents of the patrilineal resolution is: why is this change in halakhic patterns regarded as a greater provocation than the failure of Reform to require a *get* (a bill of divorce) when husband and wife sever their marital relationship? Indeed, the contrary should be the case. Jewish law views remarriage (according to civil law) without a *get* as a far more serious transgression. This is quite true — from the halakhic standpoint. It does not hold when the matter is considered sociologically. The Jewish community is not diminished and its condition not threatened when remarriage occurs without a *get*; the offspring of such a marriage may be regarded as illegitimate, but he remains a Jew nonetheless. All in the community acknowledge that he possesses the characteristics essential for membership in it. The adoption of novel criteria for Jewish identity, on the other hand, has the effect of conferring Jewish status on many who, according to traditional standards, are not Jewish and, as a consequence, introduces intolerable tensions into Jewish life.

It is interesting to note that a master of halakhah adopts the sociological standpoint in a related set of circumstances. It is well known that the punishment specified by the Bible for transgressing the prohibition on incest or adultery is far more severe than that required for one who marries outside of the community. Nevertheless, in connection with the biblical prohibition on marrying a non-Jew, Maimonides writes:

Although this transgression does not carry the death penalty, let it not be considered lightly in your eyes, for it involves a detriment carried by no other kind of prohibited union. A child born of a prohibited union is regarded as one's own son in all respects and is considered a member of the Israelite community, even though he is illegitimate, whereas a child by a gentile woman is not recognized as a son . . . Moreover such conduct causes one to cleave to gentiles from whom the Holy One, blessed be He, separated us, to turn away from God and to break faith with Him.³

Analogously, it was the adoption of the sociological viewpoint that prompted the strong response, indeed the outcry, in the traditional segment of the Jewish community, against the resolution on patrilineal descent, because it saw, in this action, unacceptable injury to Jewish life.

The sociological perspective serves to clarify still another aspect of the objection on the part of the traditional segment of the Jewish commu-

3. *Yad*, "Issurei Be'ah", XII, 7-8.

nity. Why, it is asked, raise a furor against a procedure which, as a matter of fact, Reform has been applying for decades? This criticism is irrelevant if the question is considered from a sociological point of view. Halakhically, one application of a doctrine of patrilineal descent is as repugnant as a thousand. The biblical principle is violated even in a single case. Sociologically, however, a difference in numbers makes all the difference. The Jewish community can survive a limited quantity of non-Jews who are assigned Jewish status by traditionally unacceptable standards. When, however, such criteria are not merely a reflection of occasional practice but an expression of principle intended to serve a process which seeks actively to expand the Jewish people, the traditional segment feels threatened. The specter of the proliferation of non-Jews who are assigned the status of Jews constitutes a potential danger too serious to ignore.

III

The sociological viewpoint has another advantage, namely, it suggests to us that we view the action of the Reform rabbinate in context. It will not do to consider the resolution on descent — non-lineal or patrilineal — in isolation from the total situation out of which it emerged. It needs to be assessed in the light of other events that preceded it and, perhaps, rendered it inevitable.

The change in the standard of Jewish identity can be seen as a logical outcome of a series of steps taken in the Reform community in recent years. It was not very long ago that the right of Reform rabbis to officiate at mixed marriages was debated at one of their annual conventions. Though the practice was not endorsed, the right of each rabbi to be guided by his own conscience was affirmed. A large segment of Reform rabbis decided to utilize that right to justify their involvement in mixed marriages, a circumstance that caused profound distress in traditional circles. Subsequently, the Reform community undertook an outreach program to the unchurched to expand its size. Because of the fear that this effort might prove successful, tensions within the Jewish community mounted. The most recent move, and the one that is the theme of the present discussion, is the resolution on patrilineal descent. Hence, when viewed from the sociological standpoint and the traditional perspective, the problem turns out to be, not merely a single *event*, namely, a decision affirming the principle of patrilineality, but a *process* moving towards the creation of a new category of Jew who perceives himself as such but whose Jewish credentials are not acknowledged by the traditional Jewish community.

Looked at contextually, it is also reasonable to conclude that the motivation for introducing new criteria for Jewish identity was not of a historical or theological nature, but of a sociological one. Having given

sanction to marital alliances where only one partner was Jewish, Reform rabbis could hardly refuse such couples admission to membership in their temples. When children arrived and the demand was made that they be identified as Jews, it was difficult for a Reform rabbi to defend the matrilineal norm. The sociological circumstances surrounding this decision justify the inference that it was not inspired by investigations of either halakhic or historical sources, but, rather, that social necessity was the mother of rabbinic invention.

IV

The most damaging consequence of the patrilineal decision is that it undermines, even destroys, the unity of the Jewish community.

The unity of a group or a people can be based on either ideology or identity. There are occasions when the sense of belonging to the same group with others derives from the awareness that all its members are committed to the same ideals. One cannot belong to the group of libertarians without believing in freedom as a valid political ideal. One cannot be a socialist if he fails to adopt the dogmas of socialism. In such cases, the unity of an individual with his associates is based on the adoption by all of a common ideology. Sometimes, however, unity is founded on considerations of identity independently of any ideological concerns. To be an American citizen is not necessarily to believe in freedom; citizenship may be based on the accident of location at the time of birth. Equally, one can be a citizen of Russia without being a Communist. The unity of the Jewish community is also based on parameters of identity rather than on ideology. Commitments within the community may differ. An individual may identify himself as Orthodox, Conservative, Reform, secularist, even atheist, but he will still retain Jewish status. It is this circumstance that made possible the existence of a Jewish community that was genuinely unified despite its ideological pluralism.

Heretofore, when the Reform community introduced novel patterns of Jewish living, their departures from tradition represented primarily the elaboration of a new ideology. Such modifications were not perceived to have significant bearing upon the standards of Jewish identity. It was generally believed that they left the Jewish community essentially untouched. A Jew who does not observe the Sabbath as prescribed by the Code of Jewish Law and does not adhere to the requirements of *kashrut*, even as a matter of principle, remains a Jew, nevertheless. Even when conversions were performed according to standards incompatible with halakhah, the numbers involved were perceived — correctly or incorrectly — as relatively small and insufficient to justify concern about the creation of a community of Jews not universally recognized as such. However, the new program undertaken with the intent actively to expand the Reform segment of the population, symbolized most recently

by the decision to adopt the principle of patrilineality, was, in effect, a declaration that Reform rabbis were prepared, not merely to advocate a multiplicity of ideologies, but a plurality of communities as well. This process is not simply an extension of previous policies; it belongs to a radically new and distinct category. What Reform rabbis are doing now is not merely multiplying ideologies, but splitting the community. From the sociological perspective, this is the striking and extraordinary feature of the patrilineal decision.

We may put this in still another way. One of the ideals that was adopted almost universally in the Jewish community in the past was that of unity in diversity. This ideal meant that, though there existed a multiplicity of ideologies in Jewish life, all Jews had something in common that could serve as a basis of unity. This common element was Jewish identity. If, however, new criteria of Jewish identity are being introduced, how will the ideal of unity in diversity survive? It will not do to suggest that the common element might be a commitment to the state of Israel, notwithstanding the fact that there is no characteristic, other than such concern for the Jewish state, that comes close to being possessed by the members of the Jewish community as widely as is Jewish identity. If this were the basis for unity, however, it would be necessary to include in such a unity the entire community of Christian Fundamentalists. I do not believe that anyone is prepared to accept a formula that would lead to such a conclusion.

It would appear that all who value the ideal of unity in diversity that has characterized Jewish life in the past would want to bend every effort to preserve the classic definition of Jewish identity.

History and Halakhah are Related and Inseparable

HERMAN E. SCHAALMAN

AT ITS CONVENTION IN MARCH, 1983, the Central Conference of American Rabbis voted by a convincing majority to equalize the standing of children of mixed marriage no matter whether the father or the mother was Jewish. In either case, the birth factor had to be validated Jewishly by a series of appropriate rituals and educational commitments. No child of a mixed marriage was to be either Jewish or non-Jewish by the mere fact of birth. All children of mixed marriages, in order to be regarded and accepted as Jewish, had to undergo basic rites such as naming, circumcision, etc., and, at the same time, be committed to a program of Jewish education leading to various levels of achievement marked by the appropriate religious events. Underlying all of this was the prior commitment of the parents to establish such a home and lifestyle as to support actively and fully this progression of their child in its Jewish identity.

We in the CCAR were aware of the deviation from traditional positions and practices which this new stand represented. Nor were we in doubt that especially very traditional circles and their spokesmen would take vigorous exception to our response to this, one of the most painful and vexatious problems of contemporary Jewish life in North America.

We did not have long to wait. A number of generally violent criticisms and denunciations followed which paid not the slightest attention to the underlying problem with which we were wrestling and to which we sought to find an answer, namely, how to preserve tens of thousands of children of mixed marriages for a significant Jewish future and recognizable Jewish identity.

Simply to restate the traditional position that the only legitimate way was to subject such children to conversion needs to be understood as being totally insufficient. The availability of this way was, and is, well known to all. The fact is that those involved find it unacceptable and, therefore, reject it. Overwhelmingly, those who have entered mixed marriages will not submit their children to the traditional requirements and procedures of conversion. Were they willing to do so, we would not be faced with a problem at all. Moreover, nothing in the patrilineal

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resolution of the Central Conference of American Rabbis negates recourse to this traditional solution of conversion. The CCAR resolution begins only when this traditional measure is not taken. Perhaps it was too much to expect that the critics would at least understand our pain over these current conditions and facts of life which prompted our undertaking to find a new answer in the first place.

How much the more do we welcome, therefore, the measured, scholarly tone and approach to this vexing question taken by Prof. Shaye J. D. Cohen. His discussion of the history of the matrilineal — patrilineal situation and laws is the kind of contribution to an understanding and possible clarification of the issue which all well-intentioned people are eager to receive and ponder.

It becomes obvious immediately that Prof. Cohen is committed to a controversial principle, namely, historicity, which places him so decisively in one specific camp that his early disclaimer of not dealing with halakhah but only with history is almost disingenuous. It is precisely his stand on historical perspective, development and derivation which is difficult, if not impossible, to accept by those who claim *torah min hashomayim*, that "Torah is from Heaven," and further subject this phrase to a most literal, highly restrictive reading and explanation.

When, for instance, Prof. Cohen asserts that, in the Bible, "conversion to Judaism does not exist," he must be fully aware how sharply and completely he diverges from the traditional point of view on this matter. Again, when he offers his novel alternative interpretation of Ezra's divorce decree for the foreign wives and their children and buttresses his argument by the absence of the matrilineal position in the Apocrypha, the Qumran schools, Philo, etc., he has recourse to evidence and a methodology which is unacceptable to most traditionalists.

These examples, and one could cite others from his paper, make it highly unlikely that the firm line of demarcation between halakhah and history, upon which Prof. Cohen insists, can really be maintained and observed. It is admirable that the author wants to disclaim authority and competence in a field other than his own. It seems doubtful whether his commitment to history can be so neatly segregated from halakhic considerations and decisions. Is it really true that "history and halakhah are autonomous disciplines?" Does the "historian . . . not tell the jurist which precedent to follow?" Prof. Cohen himself realizes that he may have overstated his case by conceding that "the modern jurist will, of course, consider the data provided by the historian." To my mind, this statement does not go nearly far enough. It is artificial to posit that the same person when acting as a jurist or a halakhist, can, or should, draw a clear line excluding largely his or her reading and knowledge of history and other data and experiences. Human beings do not, perhaps even should not, act this way. The jurist does not live in a separate compartment from which other influences optimally ought to be excluded.

Quite the contrary, law and life need to interact, to interpenetrate totally with each other. History, literature, all human knowledge and experience should become a part, nay, need to be part of the halakhic process. References and recourse to precedent are desirable and necessary but surely only as guide, as direction, as reminder, as warning, not as shackle. Halakhic decisions cannot be merely elaborations of preceding decisions.

Prof. Cohen refers to the rabbis' fascination with mixtures, and it is an intriguing and suggestive insight. It explains not only, possibly, their innovative introduction of the matrilineal position in the second century but also opens the door to similar explanations for other halakhic decisions in this classic period of rabbinic activity. Surely, also, the fact that Jews were no longer exclusively or predominantly living in an agricultural setting, that there was now a well-developed city life of a type and extent almost unknown in biblical times when their major city experience was with *ir hakodesh*, the holy city; that they lived now in significant numbers *huz la'arez*, away from the land of Israel, so that they had much more frequent and wide-ranging contact with non-Jews, etc., etc., all had an impact on halakhic decisions and decisions in the talmudic period.

Unless "history is bunk" it cannot but be a decisive and, in fact, welcome and necessary ingredient in the halakhic process and decisions. Such considerations are precisely also part of the impulse behind the patrilineal decision of the Central Conference of American Rabbis. Faced with unprecedented conditions in contemporary Jewish life, for which the solutions offered under significantly different circumstances of the past are unable to provide a realistic solution, we sought for a possible different, relevant answer. It may not be perfect. It may not even be the best. Perhaps, in time, we or others may find a better one. The principle, however, needs to be stated clearly and uncompromisingly: that life and halakhah, history and halakhah, are correlated intimately and inseparably.

There are a number of points in Prof. Cohen's treatment of the history of matrilineality which one can question, such as his assertion that "... by her marriage with an Israelite man a foreign woman joined the clan, people and religion of her husband." What happens to the foreign wives of, let us say, Solomon who retained their own cultic practices and were allocated sacred space for them? Are they mere exceptions as royalty, or do they hint at a pattern of similar behavior among commoners modeled on the royal example?

Similarly, Prof. Cohen's assertion that "intermarriage between Jews and Gentiles ... was uncommon ... in rabbinic society generally throughout the following centuries (after the First Century)" seems not to be confirmed by the decree of Emperor Constantius invoking the death penalty on those who contracted such marriages. Likewise, Prof. Cohen's rejection of matriarchy based on Aptowitz's essay is too easy, for, e.g.,

Julius Lewy also asserts that he found traces of matriarchy imbedded in biblical texts.

These are, however, but minor points. More difficult is it to accept Prof. Cohen's conclusion that "there is no evidence that the matrilineal principle was introduced in response to any particular social need." Is it not his own contention that, most likely, matrilineality is based on the pervasive influence of Roman law? Is not this radical change to matrilineality in adjustment to the law of the ruling power of the time a "response" to a particular social need? What other reason or motivation for such a major innovation than "social need" does Prof. Cohen propose?

Even the apparent growing preoccupation with "mixtures" is unlikely to have risen out of a vacuum. Perhaps it is a response to a much more intense interaction with the hitherto less known, the foreign, the unaccustomed, the world of the outside. In other words, again and again, one is inclined to take issue with Prof. Cohen's insistence on the clean separation of the various disciplines involved.

None of this, however, can obscure our indebtedness to Prof. Cohen for shedding scholarly light on the origin of matrilineality and on his conclusions that it is most likely to be regarded as evidence of the influence of, and adjustment to, the prevailing categories and conceptions of the Roman *connubium*. Some of us may conclude that his analysis does encourage us to seek after solutions to one of our contemporary issues that resonate with the conceptions and overtones of our modern experience and culture. In that event, such conclusions and their attendant risks are clearly not his but ours.

Jewish Identity and Jewish Descent

LAWRENCE H. SCHIFFMAN

THE DECISION OF THE EDITOR OF JUDAISM to dedicate an issue to a symposium on the subject of the matrilineal principle for the establishment of Jewish status is to be welcomed enthusiastically. The ultimate disposition of this issue will have a momentous effect on the future of the Jewish people. This principle, long taken for granted throughout the Jewish community, has now been called into question in two very different contexts. Recently, the Reform Movement in America ruled "that the child of one Jewish parent is under the presumption of Jewish descent" and that this "presumption . . . is to be established through appropriate and timely public and formal acts of identification with the Jewish faith and people." Effectively, this means that children of Jewish fathers and non-Jewish mothers who are raised as Jews are to be considered Jewish. At the same time, Professor Shaye J.D. Cohen has argued from the point of view of objective historical research that the law requiring the determination of Jewish status by that of the mother is a "legal innovation of the first or second century of our era" and that it resulted from the "influx of new ideas into rabbinic Judaism."

Cohen has wisely noted that it is not his province, as an historian, to determine whether the matrilineal principle should be retained. Yet this attempt to separate contemporary issues from the work of the historian is simply naive, especially in light of the fact that his article is cited in the October 1983 Responsum of the Central Conference of American Rabbis. To say, as he does, that history and halakhah are autonomous disciplines is to deny the impact that the modern study of Judaism has had, and will continue to have, on the development of the Judaism of the future. Indeed, the movement for the scientific study of Judaism in the nineteenth century was an attempt, in some way, to solve the problem of Jewish existence in modern Europe. What the historian does is, itself, a symptom of the times in which he lives. Even if he does not wish to influence the future, he must accept the fact that he will, and he must take responsibility for his actions. It is in this spirit that our comments are offered. We will deal, therefore, with both the historical questions and their contemporary ramifications.

I. The Historical Question

The specific interpretation of the Mishnaic material presented by Cohen will not concern us, even though our treatment of these passages is

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somewhat different.¹ The issue is not whether the Mishnah passage itself dates to the Yavnean period, for Cohen is surely correct that it does. Rather, we must ask whether this attestation of the matrilineal principle is to be taken as its point of origin or whether the Mishnah is to be seen as codifying a long-standing regulation. We shall endeavor to prove that this rule goes back way beyond the tannaitic period.

Josephus assumes this requirement to have been in effect in the early Herodian period. In *Antiquities* XIV, xv, 2 (399-405), he tells us that when Herod surrounded Jerusalem, in 39 B.C.E., he instructed his men to proclaim to the inhabitants of the city his willingness to grant amnesty to those who had resisted him. Antigonus, the last king of the Hasmonean dynasty, responded that (para. 403):

It would be contrary to their own notion of right if they gave the kingdom to Herod who was a commoner and an Idumaean, that is, a half-Jew, when they ought to offer it to those who were of the race, as was their custom.

Herod's father, Antipater, was a descendant of those Idumaeans who had been forcibly converted to Judaism by the Hasmonean king, John Hyrcanus. Herod's mother, however, was Cypros, of a noble Nabataean family. No claim of her conversion is made in our sources, even in those favorable to Herod. Hence, the narrative terms him a half-Jew, meaning one not legitimately Jewish because his mother was not Jewish. The text of Josephus indicates that, according to what the Rabbis later called *halakhah*, (Greek *ethos*, "custom"), it was not permitted for one legally a non-Jew to serve as king over the Jewish nation (cf. Deut. 17:15).

We cannot be sure if this exchange between Herod and the last of the Hasmonean kings is to be taken as historical, and it is possible that it was a later addition by some source ill-disposed to the Herodian dynasty. The passage certainly shows that, by the time of Josephus, there was no question about this rule of Jewish status as being determined through the mother. If so, it is difficult to believe that the tannaim invented this principle in the Yavnean period.

The Mishnah also contains a reference to Herod's mother's being non-Jewish. Mishnah *Sotah* 7:8 relates:

Agrippa the King stood, took (the Torah scroll) and read (it) standing, and the sages praised him. And when he came (to), "You must not set a foreigner over you (as king) who is not your brother" (Deut. 17:15), his tears welled up. They (the sages) said to him, "Do not fear, Agrippa. You are our brother! You are our brother!"

1. See L. Schiffman, "At the Crossroads: Tannaitic Perspectives on the Jewish-Christian Schism," *Jewish and Christian Self-Definition*, Vol. II of *Aspects of Judaism in the Greco-Roman Period*, ed. E.P. Sanders, with A.I. Baumgarten and A. Mendelson (Philadelphia: Fortress Press, 1981), pp. 117-122. I have covered the entire matter in much greater detail in a book entitled *Who Was a Jew? Rabbinic and Halakhic Perspectives on the Jewish-Christian Schism* (Hoboken: Ktav Publishing, 1984), pp. 9-17.

Agrippa knew of his ancestry on his father's side and was aware that, to the Pharisaic sages of his time, Herod's status had been that of a non-Jew. It is for this reason that he wept when he reached the Torah's requirement that only a full-fledged Jew serve as king. The sages reassured him by saying that he was, indeed, a Jew, as his ancestry on his mother's side was Jewish.

There is extensive debate whether this passage refers to Agrippa I (10 B.C.E.-44 C.E.) or Agrippa II (28 C.E.-92 C.E.). Agrippa I was a grandson of Herod and Mariamne, the Hasmonean princess. Their son, Aristobulus, married Berenice, daughter of the Idumaeen Costobar and Herod's sister Salome. Salome was certainly not of Jewish ancestry on her mother's side. Clearly, then, the sages could not have responded, "You are our brother!" to Agrippa I, since his mother was not Jewish according to the halakhah. On the other hand, Agrippa II was a son of Agrippa I. His mother was Cypros II, daughter of Herod's brother, Phasael, and Salampsio. Now Salampsio was the daughter of Herod and Mariamne I, the Hasmonean princess. This means that Agrippa II was fully Jewish according to the legal definition. It can only be to him that the Mishnah pictures the sages as having replied, "You are our brother!"

We have seen, then, that there is a persistent tradition to the effect that, for reasons of matrilineal ancestry, Herod was not Jewish. This tradition is attested in both Josephus and the Mishnah. Already by the turn of the era this halakhah was widespread in the Jewish community. The fact that no dispute takes place in tannaitic times regarding this matter, and that no sect of Jews is castigated for not following these laws, would indicate that they were part of the heritage of Second Temple times, at the very least. We shall ask now whether they can be dated even earlier.

Although Cohen does not discuss the material regarding the Jewish status of Herod, he does take up the question of whether the matrilineal principle can be traced back to the time of Ezra (ca. 458 B.C.E.). After summarizing this position, according to which the origin of this principle would be with Ezra's expulsion of the foreign wives soon after his arrival in Judea, Cohen says that this "view *may* [italics his] be correct but it is not necessarily so." Nonetheless, he sees it as unlikely that Ezra himself introduced this principle.

The biblical account in Ezra 9-10 requires a closer look. One of the first problems which Ezra faced upon his arrival from Babylonia was the existence of mixed marriages. Returning Judean exiles had married non-Israelite women, and children had been born to them. The suggestion was made by one of the leaders that the people enter into a covenant to expel these wives and their children, the proper procedure according to "the commandment of our God and according to the Torah" (Ezra 10:3). Ezra accepted this suggestion and the people swore to put it into effect.

Y. Kaufmann deduces from this that there could not have been an institution for religious conversion at this time. According to him, conver-

sion was originally accomplished by attachment to the land and to the collective fate of the people of Israel. The early Second Commonwealth, however, was a period of transition. The old process followed, for example, by Ruth, had gone out of use, yet the later methods of conversion, based upon a conception of Judaism as both a religion and a nation rather than Israel as a land-based national entity, had not yet developed. Only in this way can we understand why conversion was not employed to avoid the separation of families and the hardships that it must have brought about.²

The Torah had already forbidden intermarriage with certain nations. Indeed, the Rabbis of the Talmud would later trace the determination of Jewish status through the mother to Deut. 7:3-4. Ezra wove the various biblical verses together into a halakhic midrash which taught him that marriage with non-Israelites was totally forbidden. What is most interesting is that there is a contrast between the narrative material and the legal statements. The legal texts (Ezra 10:11, Neh. 10:31) specifically state that intermarriage is forbidden regardless of which partner, the male or the female, is Jewish. Yet the story (Ezra 9:2, 10:2, cf. Neh. 13:23) related only to the non-Jewish wives and their offspring. We are specifically told that marriage with a non-Jewish wife leads to the diluting of the "holy seed among the peoples of the land" (Ezra 9:2).

The most likely explanation is that already at this time there was a definite distinction between males and females regarding intermarriage. Whereas all intermarriages were prohibited, the offspring of Jewish mothers were considered Jewish, while the offspring of non-Jewish mothers were not. Hence, to Ezra, the non-Jewish wives and their children were the primary area of concern. It was they who represented the loss of Jewish descent (*zera^c ha-qodesh*, Ezra 9:2). Despite Cohen's statements to the contrary, it is probable that the close, natural relationship between mother and child in the early stages of life, and the consequent ability of the mother to mold the personality of the young child, are the reasons for determining Jewish status through the mother.

The laws expressed in our Mishnah and Tosefta passages regarding the qualifications of the born or hereditary Jew can be documented as early as the mid-fifth century B.C.E. Indeed, they are confirmed by Josephus for the late Second Temple period. The absence of such regulations in the First Temple period is due to the totally different historical circumstances of Israelite existence. Israelites were permitted to marry those who sought to become part of the people of Israel with the exception of those nations specifically excluded by biblical law. Because Israel was conceived as a land-based national entity, such a system of informal conversion was sufficient. When the exile caused Judaism to adapt to a new,

2. Y. Kaufmann, *History of the Religion of Israel*, Vol. IV, *From the Babylonian Captivity to the End of Prophecy*, trans. C.W. Efrayimson (New York: Ktav Publishing, 1977), pp. 331-43.

extraterritorial existence, the importance of genealogy increased. Hence, the regulations regarding the determination of Jewish status enshrined in our Mishnaic sources must have originated in the Babylonian exile.

Cohen's assumption that these regulations are unattested in pre-Rabbinic times rests on the misinterpretation of the relevant texts, and on a cavalier dismissal of the important biblical evidence. Because we have set the origins of these rules in the Exilic period, we need not seek solutions in Roman law or in forbidden mixtures. We see the development of these laws as the natural outgrowth of the new socio-historical situation in which the Jewish people found itself.

II. The Lessons of History

The historical situation of the period of the Return from the Babylonian Exile was similar to that of our own time. A major part of the Jewish people was scattered throughout the world, yet a small and important community established itself in the Land of Israel. Against this backdrop, a formula for Jewish status and identity, based on heredity traced through the mother, was developed. In the ensuing centuries, the procedures for proselytism were concretized and we know them to have been in force by the turn of the era. These regulations clearly defined Judaism not as a religion in the usual sense, but as a sort of supraterritorial nation.

These procedures were all in effect before the rise of Christianity. We have demonstrated elsewhere in great detail that the Jewish-Christian schism was, in the view of the Rabbis, the result of the fact that the Christians ceased to be Jews in the halakhic sense when they began to accept gentiles into the Church.³ When the requirements of formal Jewish proselytism were dropped, in the attempt to attract Hellenized pagans, the Rabbis had no choice but to regard the Christians no longer as Jewish heretics, but as non-Jews. This process took place gradually, between the Great Revolt of 66-74 C.E. and the Bar Kokhba Revolt of 132-5 C.E.

Let us consider briefly what would have happened in this formative period had the laws of Jewish status not been strictly observed by the Jewish community. If Jewish status had been a matter of personal identification, as it had been in First Temple times, the Jewish Christians would have been successful in totally supplanting Judaism. As they welcomed the gentile Christians into their religious community, which they considered to be the true Israel and which they spoke of as the true inheritor of the traditions of the covenant of Abraham, these converts would have seen themselves as Jews. Had they been acceptable to the Jewish community, no distinction would have been possible between the believers in the Messiahship and divinity of Jesus and the real Jews. Judaism, as we know it, would have passed from the pages of world history. The com-

3. Schiffman, "At the Crossroads," pp. 147-149; *Who Was a Jew?*, pp. 51-53.

munity of faith which had come into being at Sinai would have, indeed, come to an end at Calvary.

III. The Unity of the Jewish People

The issue of Jewish status is not simply a theoretical one to be debated by scholars. It is important that what is at stake in this debate be properly understood by the Jewish community. The question is whether there shall be one Jewish people or two. Will all Jews marry one another, or will there no longer be a Jewish people as we know it?

It is important to realize that post-biblical dating in no way implies minimal authority. Judaism is not biblical religion. On the contrary, many of the most precious treasures of our heritage, such as the lighting of Sabbath candles and the prayer services, are of post-biblical origin. Even if Cohen's late dating of the matrilineal principle could be defended in some way, this would in no way detract from the authority of this principle according to the halakhah.

In the days of the Second Temple, there was no attempt by any one sect to prohibit marriage with another. In Mishnaic times, however, marriage with the Samaritans was prohibited by the tannaim. Prohibition of marriage with Christians followed historically on their acceptance of gentiles into the Church. When the Karaites arose, in the early Middle Ages, there were varying opinions. It is sufficient to note that, according to most later authorities, marriage by a Jew to a Karaite is prohibited by halakhah. Those with whom marriage is prohibited are seen, in great measure, by the traditional community, as having left the Jewish people and are in a no-man's land of Jewish identity.

In the nineteenth century, despite all the conflict between the early Reformers and the Orthodox leaders, a consensus, unspoken though there, nonetheless, came into being. The Jewish status of Reform Jews was not to be questioned by the Orthodox. In our own day, this consensus still exists. Yet, today, we seem to be on the verge of a change. In a generation or two, as a result of differences regarding the laws of religious divorce and Jewish status, we will come to a situation in which Orthodox Jews who live by the halakhah will be virtually unable to assure what to them is the legitimacy of marriage to a Reform Jew. From the halakhic perspective, the Reform Jew will no longer be a fellow-Jew whose way of life does not conform to the halakhah. Like the Samaritans and the Karaites, he will first fall into a doubtful status in the eyes of traditional Jewish law. Eventually, like the Christians, he may even come to be regarded as a gentile by Orthodox Jews. The words of the afternoon *Amidah*, "Who is like Your people Israel, One nation in the land," will become a lie.

We cannot afford to minimize the problems which face the Jewish people today in America. The Reform movement, in particular, is beset

by the problems of intermarriage and Jewish status. Yet abandoning the definitions of Jewish status will in no way solve these problems. Retracing the steps of Paul and admitting gentiles to the synagogue will only complicate matters further. Only by making Judaism again a way of life, a lifetime of learning and commitment, will we insure its continuity. Abrogating the laws of Jewish status as we know them can only lead to further assimilation, destruction of the unity of the Jewish people, and the opportunity for the mantle of Jewish status to be claimed by anyone, a phenomenon observable already on the American religious scene in various "Hebrew-Christian" groups.

Our time is not the first period of crisis for Judaism. The Second Temple period was one of Hellenism, sectarian conflict, and apostasy. In its aftermath, nascent Christianity challenged the very identity of the Jewish people. The laws of Jewish status "kept us alive, sustained us, and brought us to this day" then in what appeared to be the Jewish people's darkest hour, the destruction of the Jerusalem Temple and of the nation. Today, in the aftermath of yet another catastrophe of magnitude previously unimagined, and of the rise of the State of Israel, which portends so great a future for *‘Am Yisrael*, these laws will continue to maintain the Jewish people.

Facing the Realities of Intermarriage

ALEXANDER M. SCHINDLER

THE DEMOGRAPHIC IMPERATIVE FACING THE Jewish people today was the single most important motive for Reform Judaism's 1983 resolution making the patrilineal principle coequal with the matrilineal in determining Jewish status. We wished to respond to the outstanding problem of intermarriage with an active program of outreach. We wished to contain the loss that intermarriage threatens to our numerical strength and our communal health, and, if possible, convert that loss into a gain.

Such a socially-minded motivation for halakhic innovation may smack of "convenience," "opportunism" or even "heresy" to some Jews for whom "halakhic innovation" is itself an oxymoron. Against this hide-bound attitude, Professor Shaye J. D. Cohen's concise examination of the historical derivations of the matrilineal principle is very helpful. Obviously, the underlying assumption of Dr. Cohen's study (and of his field of scholarship generally) is that halakhic tradition has strong social roots.

We can only speculate about the particular circumstances — crisis or well-being? (most likely the former) — that motivated the instituting of the matrilineal principle. Professor Cohen himself offers more questions than answers about his hypothesis of Roman influence upon halakhic thinking, for example. Nonetheless, we can infer from his article a progressive view of Judaism — one with which the Reform movement's approach to the matter of Jewish descent is well in tune.

About the social imperative for our modern halakhic thinking we need not speculate: we are living the statistics. A national Jewish population study taken about a decade ago revealed the interfaith marriage rate to be just above 30%. Of every three of our children who marry, one chooses a non-Jew as life-mate.

A Jewish demographer estimates that there is a total of 35,000 intermarriages annually. Of these, two out of three involve a Jewish man and a non-Jewish woman, and only one in four of these wives converts to Judaism.

Even given our miniscule birthrate, we can expect at least 35,000 children each year from intermarriages. Taking parents and children together — as they must be considered, for the family is the basic unit of Jewish identity — some 100,000 individuals are threatened with exile or alienation from the Jewish community and in no small measure by the

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exclusively matrilineal rule of descent. A hundred thousand souls up or down each year — a swing of two million in a decade — four million more-or-less Jews by the year 2000 — and all this out of our present population of just under six million in the United States alone.

The spirit of Reform Judaism bids us to come to grips with this reality. It suggests that we become more assertive in stating Judaism's claim to allegiance — that we become, in effect, missionaries for Judaism, beginning the effort with those non-Jews who are already bound to us by marriage, reaching out to embrace their children into the Jewish fold, and ultimately reaching beyond to all who are seekers after truth. Unlike other branches of our religion, Reform Judaism will not enforce its opposition to intermarriage by punishing and rejecting those who do intermarry. We are loathe to alienate them and their — our — children. On the contrary, we are resolved to reach out to them, embrace them, do everything that we humanly can to make them a part of Jewish life.

The hallmark of Reform Judaism has been honesty: never to pretend to be what we are not, always to proclaim proudly what we practice. No one in our midst truly believes that Khrushchev's grandchild is Jewish but Ben-Gurion's is not and had to be converted. Yet the damage done to the children of intermarriages by our past lack of a forthright declaration that they are fully Jewish has been significant. Thus, over a year ago, I received the following letter from a young woman named Adrienne Gorman:

When I read your speech (she wrote), I realize how deeply the subject of Jewish identity has wounded me . . . and how successfully I had covered over the wound through the years. I was raised to be aware that some part of me was Jewish, and that with that birthright came the responsibility to remember the six million victims of the holocaust — to remember them not as a detached humanitarian who, on principle, abhors extermination, but on a far more fundamental level, where the soul of the witness resides.

I can't recall when I first came to understand that my sort of allegiance was to be considered nothing more than a sympathizer's or when I tried to answer for myself the question of what choice I would make if Hitler came again, this time using the Halachic definition of a Jew in rounding up his candidates for the ovens and the camps. But at some point over the years I did decide that where my father's faith — or more precisely, his heritage — was an issue, I would without reservation take my stand as a Jew.

Thus, I effectively bestowed on myself all of the deficits of being a member of an oppressed group with none of the benefits of that community. Jews consider me a non-Jew, non-Jews consider me a Jew . . . and with a despair tinged with as much humor as I could muster, I began to think of myself as nothing at all.

How could we fail to respond to such people? Why should we demand that they undergo a formal conversion when their Jewish identities are already secured by far more than a symbolic act? Why should we not say to the Adriannes of this world: By God, you are a Jew! You are the daughter of Jewish parents. You have resolved to share our fate. You are

therefore flesh of our flesh, bone of our bone. You are in all truth what you consider yourself to be — a Jew.

In addition to the threatening reality of intermarriage for our population, there is a positive reality of Jewish life to which the Reform decision on patrilineal descent is an affirmative response, and that is the deepened involvement of Jewish fathers in the upbringing of their children. The impact of the women's liberation movement upon the general American culture and particularly upon the more educated has resulted, for many young Jewish couples, in an equal sharing of the burdens, chores, decision-making and joys of child-rearing. Dr. Cohen's reference to "the intimate connection between a mother and her child" that "makes it certain that she will influence him and instruct him" (or her) is undergoing an expansion in our day and age; no longer can we automatically assume that the influence of a gentile mother upon the child will be stronger than the influence of the Jewish father.

Reform Judaism does not, however, react only to the contemporary condition. We also enter into a dialogue with the past. We refuse to be chained by halakhah, but just the same we want to be instructed by it.

As Dr. Cohen points out, the genealogical tables of the Torah are overwhelmingly patrilineal. In matters of inheritance, the paternal line alone was followed. Solomon married many foreign wives, and the child of one of them, Rehoboam, succeeded him to the throne. Moses married Zipporah, the daughter of a Midianite priest, yet her children by him were considered Jews. Joseph married Asenath, the daughter of a Priest of On, and the children of their union were reckoned as Jews. Indeed, unto this day all male children of Israel are blessed with the blessing that they be like unto Ephraim and Menasseh — even though one of their grandfathers was a priest who worshipped the sun in the heathen shrine at Heliopolis near Cairo.

In rabbinic literature, as well, evidence of the patrilineal tradition is manifest. We invoke the God of our fathers in prayer. We are summoned to the Torah by our father's name. We are reminded that we live by *zekhut avot*, the merit of our fathers, alone.

Perhaps most significant of all, both the Torah and rabbinic law hold the male line absolutely dominant in matters affecting the priesthood. Whether one is a Cohen or a Levi depends on the father's priestly claim. If the father is good enough to bequeath priestly status, why isn't he good enough to bequeath Jewishness?

It might be noted in this connection that, in some respects, Reform Judaism is more stringent in its approach to Jewish status than is Orthodoxy. Tradition confers Jewishness automatically following genealogical lines. Reform Judaism sets some added requirements: that while the child of either a Jewish father or a Jewish mother may be considered Jewish, Jewishness must be further confirmed by "acts of identification with the

Jewish people” and “the performance of mitzvot.” Jewishness cannot only be presumed; it must be expressed in some concrete way through an involvement in Jewish life and the willingness to share the fate of the Jewish people.

Will Reform Judaism’s decision somehow shatter the unity of the Jewish people? That argument could have been made, and doubtlessly was made, at every step in our development as a distinctive movement within Judaism. Certainly the halakhic principle of *taharat ha-mishpahah* was not held inviolate when we, as a religious community, determined to accept a civil divorce without *gittin*. From the Orthodox perspective we reared a generation of *mamzerim* — an irremedial step halakhically, while the acceptance of the paternal line is at least theoretically subject to remedy by means of halakhic conversion for the “patrilineal Jew” who moves into Orthodoxy. Still, our spiritual progenitors did not wilt, the imprecations were forgotten and the Jewish world is still whole.

Nor do I share the fear that the Law of Return will be amended because of our patrilineal resolution. The passage of such an amendment depends primarily on the balance of political power in Israel. Over the decades, there have been no less than twelve attempts to change that law — all but one occurring before the patrilineal resolution was even considered. No doubt there will be further ones. The recent elections, which gave added prominence to the role of small political parties in Israel, makes this prediction almost certain. What we do or fail to do, however, is not the determining factor in the process.

Finally, some argue that our declaration will alienate even non-Orthodox Jews, both here and in Israel. Yet these are precisely the kind of people whom we seek to attract to us. Is it right to ask them to follow us if we deny what we truly believe, fail to state in theory what is our practice, and pretend to be what we are not?

Our patrilineal resolution was born of necessity and conviction: an intermarriage of motivations that is worthy of our essential character. It was not a change made for fear of offending Jews or non-Jews; it was not a change made to render ourselves more palatable to others. Adaptive change of that kind *is* alien to our essential character and amounts to sycophancy.

Our spiritual forebears did not create Reform Judaism in order to have us turn it into a tinsel imitation of Orthodoxy. Instead, they created a vision of Judaism as a flowering plant. It is not merely a tangle of roots, but is a plant that draws nourishment from those roots; it is not only a bare stem, but is a firm and growing stem; it is not simply a cut flower, fast to fade, but flowers anew in each generation. Our community is committed to cultivating that plant, fertilizing it with new passions and new ideas, and trimming its tangled excess, so that it can grow in the harsh conditions of today’s world.

Halakhic Perspectives on the Matrilineal-Patrilineal Principles

PHILLIP SIGAL

THE TORAH CLEARLY ENUNCIATES A PATRILINEAL principle by which offspring are classified according to the lineage of the father.¹ There is no equivalent passage in what we consider the revealed word of God that establishes a matrilineal principle. The latter stems from the interpretive torah of post-Ezraic *hakhamim* and post-Hasmonean proto-rabbis,² and is not attested in any Judaic literature before the Mishnah. Nevertheless, alongside this basic patrilineal principle, biblical sources imply recognition of the children of non-Israelite fathers and Israelite mothers as Israelites.³ Thus, biblically, a child born to an Israelite woman was an Israelite regardless of the origin of its father. This implies an approach to mixed marriage in which the penalizing of the child was not used as a deterrent. There was no hard and fast patrilineal or matrilineal principle, but, rather, a pragmatic fluidity.

The foregoing refers to a time before Ezra and Nehemiah when the only prohibition against mixed marriage was limited to the so-called "seven nations" of Canaan⁴ and was clearly limited to the exigencies of the time, lest the Israelites be drawn to the indigenous fertility worship of pluralistic deities and abandon the worship of Yhwh.⁵ Matters became more complicated after the reformation of Ezra and Nehemiah, who expanded the prohibition of mixed marriage from the "seven nations" to all gentiles. Ezra acted contrary to the Torah, as the latter had forbidden Egyptians for only three generations, a prohibition which had already

1. Num. 1:2, 18.

2. On the terms "interpretive torah" and "proto-rabbi" see Phillip Sigal, *The Emergence of Contemporary Judaism*, Vol. I, *The Foundations of Judaism*, Part Two, *Rabbinic Judaism* (Pittsburgh: Pickwick Press, 1980), Chapter One.

3. See, e.g., Lev. 24:10; I Kings 7:13f.; II Chron. 2:12f. Cf. II Sam. 17:25, where *hayisraeli* should read *hayishme'ee'li* as at I Chron. 2:17. Cf. I Chron. 2:34f.

4. Ex. 34:16 proscribes only six ethnic groups in Canaan, while Deut. 7:2 explicitly prohibits seven. Cf. Josh. 23:12.

5. Ex. 34:16; Deut. 7:4. From Judg. 3:6 we know that the Israelites did not observe even this limited proscription.

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lapsed long before.⁶ Soon after that time, the turmoil of the Hellenistic period led to the pietism and stringency manifested by the *ḥasidim* (pietists) or Pharisees coinciding with the fierce anti-gentilism of the Hasmoneans. The promulgation of a matrilineal principle, which we meet more explicitly later, that in certain limited circumstances of mixed marriage when the mother is not Jewish a child's descent status is to be based upon who is its mother, was an arbitrary decision. It was the work of pre-Yabnean forces inspired by an unfortunate combination of anti-gentilism and extreme pietism.

This paper cannot examine in depth all aspects of the theologico-halakhic complex related to exogamy, conversion, and the variety of theories that have been propounded for the origin of the matrilineal principle.⁷ The popular view that matrilineal descent was a matter of humanitarian compassion designed to allow for Judaic status to be given to children who were born to Jewish mothers as a consequence of the increasing incidence of rape of Jewish women by Roman soldiers, is a product of apologetics. First, as noted earlier, it was already the case in biblical times that the offspring of Israelite/Judean mothers and gentile fathers were Israelite or Judean. And second, a careful reading of the primitive halakhah, in

6. Deut. 23:1-9 implies that, in addition to the original prohibition of the "seven nations," the sexually malformed (v. 2), the *mamzer* (v. 3), Ammonites and Moabites (v. 4) were banned. (Sexually malformed persons were later permitted to marry proselytes and emancipated slaves: M. *Yeb.* 8:2.) Egyptians and Edomites were eligible after the third generation (vv. 8-9). When Ezra confronts the mixed marriage question (Ezra 9:1-2), he expels all "foreign wives" and their children including Egyptians (10:3, 10f.), in defiance of Deut. 23:8f., although he claims to act in accordance with the Torah (10:3). When Nehemiah mediates the new covenant (*amanah*, 10:1) he includes a prohibition against all exogamy with the *ʿammei ha'arez* (10:31; cf. 13:23 where he re-specifies Ammonites, Moabites and women of Ashdod and, at v. 27, generalizes "foreign women"). The Ezraic-Nehemiah expansion of the ban on exogamy, however, does not necessarily imply a blanket prohibition on all non-Jews. *Nakhriot* might signify only those of "the people of the land," in the spirit of Deut. 7:3. The proscription was culturally and historically determined, and might be so again. Jub. 20:4, 22:20, 25:1-10 specify only Canaanites, but 30:7, 11 reflect the post-Ezraic era when gentiles, in general, were barred from marriage with Jews. Since Jubilees reflects the stringent pietistic halakhah, as does Qumran, it does not follow that all Jews agreed. The Hasmoneans were said to have decreed a ban on all sexual relations between Jews and non-Jews (B. *San.* 82a), but, first, this does not necessarily imply a permanent proscription of all exogamy, and, second, the Hasmoneans reflect a fierce anti-gentile bias. In fairness to Ezra it might be conjectured that the words "let it be done according to the *torah*" in Ezra 10:3 do not refer to the Torah of Moses but to the new current instruction of Ezra.

7. See, for example, Trude Weiss-Rosmarin, "The Mother's Child," *The Jewish Spectator*, 37 (1972); David Aberle, "Matrilineal Descent in Cross-Cultural Perspective," in *Matrilineal Kinship*, ed. David M. Schneider and Kathleen Gough (Berkeley: U. of California, 1961). Further suggestions have been made in a paper delivered at the annual meeting of the Central States Anthropological Society, Chicago, 1974, and sent to me by the author, Lee Haas, in which she propounded the notion that it was designed to discourage exogamy; Solomon Zeitlin, "The Offspring of Inter-marriage," *Studies of the Early History of Judaism* (New York: KTAV, 1974), Vol. II, pp. 418-423. See also J. David Bleich, *Contemporary Halakhic Problems* (New York: KTAV, 1983), Vol. II, pp. 103-107.

fact, surprisingly contravenes any notion of humanitarian intent in the matter of status.⁸ Invariably, the halakhah is to the detriment of the child in every case where there is some irregularity. In each case, in the crux passages to be discussed below, the child is deprived of what might be considered the higher or regular Judaic status in the context of the Judean-Galilean milieu of the first and second centuries.

Shaye J.D. Cohen aptly puts to rest the Roman-soldier-rape theory and also correctly eschews another simplistic argument often offered that the matrilineal principle was the product of our certainty as to who is the mother. He indicates that, if certainty of paternity was involved, the matrilineal principle should always prevail and not only in mixed marriages.⁹ Furthermore, there are cases of uncertain paternity where the matrilineal principle is not invoked.¹⁰ Cohen offers new suggestions. One of these, the influence of Roman law, is relevant. The other, that the rabbis were preoccupied with mixed breeding among animals and extended their concern to people is rather questionable.¹¹

Halakhically, the crux of the question is generally taken to be Mishnah *Kiddushin* 3:12. The fourth segment there teaches that, because a slave or a gentile woman is not eligible for *kiddushin* (the rite of marital consecration) with any Jew, the offspring of her sexual union with a Jew assumes her status.¹² What is often overlooked in the discussion of this Mishnah is that a careful reading of the first three segments of the paragraph indicates that there is really no hard and fast patrilineal or matrilineal principle *per se* advocated here. Rather, the teaching here is that the status of children will vary in accord with different criteria, whether, for example, sin was committed in the conception or whether there is eligibility for *kiddushin*, what the Roman law called *connubium*, namely, whether this particular sexual union is *a priori* permitted or forbidden. The child's status is variously determined by the father, the mother, by whoever has the lower social status and, in one case, the child is declared a *mamzer* receiving neither parent's status. This entire pericope is paralleled in Roman law, and the halakhah is here saddled with halakhic disability

8. M. *Kid.* 3:12; *Yeb.* 7:5 and the discussion below. See n. 12.

9. Shaye J.D. Cohen, "The Matrilineal Principle in Historical Perspective" in this issue of JUDAISM.

10. M. *Ket.* 1:9f.

11. See n. 13. Space disallows a critique of the question of mixed breeding.

12. The four segments of the Mishnah are here summarized: a) Wherever *kiddushin* is valid and there is no sin, the child's status is that of the father; b) wherever *kiddushin* is valid but a sin is involved in contracting it, e.g., a widow and a high priest or a Jewish woman to a *mamzer*, the child follows the lower status; c) where sexual union is forbidden by the Torah, e.g., incest, the offspring is a *mamzer*; d) where *kiddushin* is invalid, e.g., in the case of a gentile woman, the child follows the mother. Clearly, the matrilineal principle is established in only one instance and, then, contrary to biblical practice. In two instances, neither patrilineal nor matrilineal principle is invoked and the child is penalized.

inherited from Roman jurists.¹³

In addition to the crux passage noted previously there may be another equally crucial halakhah.¹⁴ Here the child of a Jewish mother and a slave or a gentile¹⁵ father is a *mamzer*, that is, it follows neither father nor mother completely but becomes a Jew laden with serious halakhic or status disabilities. In the Tosefta² we read a complementary two-track halakhah that a child conceived of a Jewish woman who had sexual union with a slave or a gentile man a) is a *mamzer*; b) is not a *mamzer*.¹⁶ Prior to that we read that when a Jewish woman, whether of priestly, levitical or common Israelite descent, was married to a proselyte, the child born of their sexual union is a proselyte, and if born to an emancipated slave the child is an emancipated slave.¹⁷ This implies that the child inherits the disabilities of the father. Again here, even with patrilineal descent, it is to the detriment of the child.

Although Shaye Cohen delineates these sources to be Yabnean (ca. 80-120 C.E.) I would argue that they are proto-rabbinic, pre-70, flowing from the older Ezraic-Nehemian expansion of the prohibition of mixed marriage, Hasmonean hasidic anti-gentilism and Pharisaic halakhic stringency and pietism. It should be noted that R. Simon b. Elazar rejects the halakhah that made a *mamzer* of a child born to a Jewish mother and a slave or gentile.¹⁸ He thus attempted to reverse a long-standing injustice,

13. See Boaz Cohen, *Jewish and Roman Law* (New York: JTS, 1966), vol. I, pp. 133f. and 156 ff., nn. 150-153; Louis M. Epstein, *Marriage Laws in the Bible and the Talmud* (Cambridge: Harvard U. Press, 1942), pp. 174, 194-197; Saul Lieberman, "Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum," *JQR*, 35 (1944): 1-55, and also now in Saul Lieberman, *Texts and Studies* (New York: KTAV, 1974), pp. 57-111. Shaye Cohen suggests that the matrilineal principle was introduced in the first or second century under the influence of Roman law, and adds that we cannot assess this theory until the presence of Roman influences in rabbinic Judaism is studied in greater detail. He fails to draw attention, however, to the work already done on this specific Mishnah by Boaz Cohen, *Op. cit.*

14. *M. Yeb.* 7:5.

15. Some mishnaic texts read *kuti*, others *obed kokhabim*; in either case, the intent is a non-Jew. There is another problem here which we cannot discuss at this juncture. The Mishnah reads *venis²et*, that this Jewish woman and the gentile were "married," that is, *nisu'in* was performed, in contradiction to *M. Kid.* 3:12 where it is assumed that there can be no *kiddushin* between a Jew and a gentile, presupposing as well no *nisu'in*. *Tosafot* to the texts was also bothered by this, expresses wonderment, and rejects the idea that *nisu'in* was performed. It appears to me, however, that this text and its parallels at *M. Kid.* 3:12 and *T. Kid.* 4:15f., all point to the fluidity of the halakhah and should further relieve us of any squeamishness in applying it in a manner most appropriate for our day.

16. *T. Kid.* 4:16.

17. *T. Kid.* 4:15. It is not possible to discuss here the variegated approach to proselytes in earliest halakhah. Not all views accorded proselytes and their offspring full rights in Judaism. Even Maimonides declared that *gerim*, proselytes, are not *kahal² adonay*, of the "assembly of the Lord," and lack certain rights of other Jews; see *Hilkhot Issurei Biah* 15:7.

18. R. Simon b. Elazar transmitted teachings of R. Meir, which indicates that some Yabneans rejected the earlier anonymous Pharisaic halakhah declaring the child a *mamzer*. On Pharisaic versus proto-rabbinic halakhah see Sigal, *Op. cit.* (n. 2 above). Clearly, later on

but, in the ultimate compilation of the Mishnah, the halakhah was recorded both ways: a) the child of a Jewish mother and a gentile father was a Jew (M. *Kid.* 3:12); b) the child of a Jewish mother and a gentile father was a *mamzer* (M. *Yeb.* 7:5).¹⁹

Other relevant rabbinic texts point to a great fluidity in the halakhah, and should give cause for reconsideration to moderns who, pursuing the chimera of a monolithic halakhah, threaten not to allow their children to marry the children of those groups whose halakhah of descent status, conversion, marriage and divorce differs from their own. Our predecessors of the early proto-rabbinic and rabbinic period did not play the game of halakhic intimidation. They believed that *ʿelu vaʿelu dibrei ʿelohim hayyim*, “both are the living words of God.”²⁰ The great movers and shakers of halakhah, Bet Hillel and Bet Shammai, differ as they might on marriage and divorce halakhah, never prohibited the offspring of their respective camps from marrying one another.²¹

Akiba maintained that where a Torahitic negative precept (*lav*) is violated in a marriage, for example, when a person remarried his divorced wife, the *kiddushin* is not valid. He was opposed by anonymous *hakhamim* whose view persisted and was still upheld by R. Papa in a later generation (300-375).²² Conversely, during the third century, Rabbah bar bar Hanah still argued that a child born of a gentile’s impregnation of a Jewish woman is a *mamzer*. Despite M. *Kid.* 3:12 and other evidence, he said *hakol modim*, that this was a unanimous view.²³ This unanimity was reduced, however, to Shimon Hatemoni, a second-century tana who was in obvious disagreement with R. Simon b. Elazar.²⁴ Ultimately, after debate persisting since the days of Ezra, a fifth or sixth century saboraic editorial comment declared that *hilkhata*, the halakhah is that the child of a gentile man and Jewish woman is *kasher* (“normal”) and that implied that it follows the mother.²⁵ Once this matrilineal principle was achieved for the offspring of a Jewish woman and a gentile man in accord with biblical practice, it became the standard norm for the offspring of a Jewish man

the *amoraim* adopted R. Simon’s view but not without a long-lasting debate. See B. *Yeb.* 44b-45b; *Kid.* 68b.; P. *Kid.* 64d.

19. To harmonize the texts, some will argue that the *mamzer* child of the M. *Yeb.* 7:5 is, in any event, a Jew. But the fact remains, first, that it is not a full Jew, and second, that it is penalized, receiving neither patrilineal nor matrilineal status. Cf. T. *Kid.* 4:16.

20. B. *Er.* 13b; *Git.* 6b.

21. M. *Ed.* 4:8.

22. B. *Yeb.* 23a; 44b; *Kid.* 68a. This would imply that, despite the prohibition on mixed marriage, the marriage would be valid and, regardless of which parent is Jewish, the child would be Jewish, as in the Bible.

23. B. *Yeb.* 44b-44a.

24. Cf. also B. *Yeb.* 16b; 99a; *Kid.* 70a; P. *Kid.* 64d.

25. B. *Yeb.* 45b.

and a gentile woman, which ran counter to biblical practice.²⁶

We see from the foregoing that, in cases of irregularity, some sages maintained a matrilineal principle for a child of a Jewish father and a gentile mother, while others declared a child of a gentile father and a Jewish mother a *mamzer*. Others emphatically affirmed the patrilineal principle arguing that the *mishpahah* of the wife's family does not count as *mishpahah*.²⁷ It is only a short step to midrashize the latter view with a *kal vehomer* (deducing the major from the minor): if the *mishpahah* of a Jewish woman does not count for the status of a child, how much more so should the *mishpahah* of a gentile woman not count. The consequences of this would be to restore the biblical patrilineal descent for the offspring of a Jewish father and non-Jewish mother, and certainly offers itself as a contemporary option based upon a sound hermeneutical principle. Personally, I would not take this route because I am opposed to eliminating the legitimacy of lineage for the woman's family. In any event, the rabbis ignored this possibility and adopted the matrilineal principle as halakhah.

We are no closer today than fifteen hundred years ago to understanding why they did so. Biblically, as has been noted, every progeny of the sexual union of a gentile with an Israelite/Judean, even without conversion, for which no formal rite existed until the first century, was an Israelite or a Judean.²⁸ This was true when the child was the offspring of an Israelite man and a gentile woman as it was of an Israelite woman and a gentile.²⁹ What occurred to reverse this biblical dual matrilineal-patrilineal pattern is a historical puzzle which must be addressed.

It is commonly argued that Ezra's expulsion of the foreign wives and their children was the introduction of the matrilineal principle.³⁰ The Ezra story says nothing about "foreign husbands." It is to be assumed that their children were Jewish and, consequently, it was a matter of indifference whether the husbands stayed or departed. But placing this construction upon the Ezraic-Nehemian episode requires that we ignore the Torah's even-handed prohibition in Deut. 7:3-4. Both sons and daughters are barred from mixed marriage. Why would Ezra not treat their offspring similarly and expel foreign husbands and their children? When Cohen suggests that "such marriages are generally ignored by biblical

26. See Maimonides, *Hilkhot Issurei Biah* 15:3; *Shulhan Arukh 'Eben Ha'ezer* 4:5, 19. Maimonides, *Ibid.* 15:4, summarizes the matrilineal principle: any child born of a slave or a gentile woman follows the mother, and any child born of a Jewish woman and a slave or a gentile, follows the mother.

27. B.B.B. 109b.

28. Space does not allow for a discussion of the rite of conversion here, but this is a significant aspect of the halakhah of status or *yuhasin*.

29. See n. 3 above.

30. Ezra 9-10; Neh. 13.

texts," he begs the question, since some biblical texts do refer to them and consider the offspring of a mixed union as Judean/Israelite.³¹ Even assuming, with Cohen, that Ezra introduced a "bi-lateral requirement for citizenship," that both parents must be Judaic, does not explain why Ezra did not expel foreign husbands if he expelled foreign wives.

The possibility is strong that we must revert to the pre-Ezraic era and see as the crux passage of this issue neither *M. Kid.* 3:12 nor *M. Yeb.* 7:5, but *Deut.* 7:3. This prohibition on mixed marriage called for halakhic midrash. Yet *Sifre*, *Rabbah*, and *Tanhuma* are all silent. The question naturally arises: and what if the son or the daughter does intermarry? It is clear that this is a *lav* (a negative command). Yet there were respectable rabbinic opinions that recognized such *kiddushin*.³² In accord with this, and with the biblical view that as long as one parent is Jewish the child is incorporated into Israel even if the non-Jewish parent is not, it is suggested that contemporary mixed marriages can be recognized and the offspring considered Judaic.

The Palestinian Talmud is suggestive.³³ We read there that R. Yohanan, in the name of R. Shimon ben Yohai, commented upon *Deut.* 7:3-4. Without any basis in the text, and without a shred of underlying evidence he offered the exegesis that the word *binkha*, "your son" (7:4) teaches that only the son of an Israelite woman is "your son," while the son of a *goyah*, a gentile woman, is *benah*, "her son," not *binkha*. That is, the son of a gentile woman is a gentile, in a reversal of biblical practice which did not have the matrilineal principle for children of gentile women. We then read that Jacob of Neburiah, on a visit to Tyre taught that a child of a gentile woman and a Jew is Jewish.³⁴ On the basis of *Deut.* 7:3-4 he was reprimanded and flogged! And, yet, there is no reality to the exegesis which draws a distinction between the child of a Jewish mother and a gentile father and a gentile mother and a Jewish father.³⁵ In a parallel episode we are told Jacob was again flogged for regarding a child of a gentile woman and a Jewish man born on the Sabbath eligible for Sabbath circumcision like any Jewish child, on the basis of *Num.* 1:18. Again the same exegesis of *Deut.* 7:4 is offered in tandem with *Ezra* 10:3, claiming that *Deut.* 7:4 justified Ezra's expulsion of the children of the foreign wives. Although some might question the propriety of seeking halakhic support from Jacob of Neburiah it remains uncomfortably true that the flogged Jacob, perhaps a Christian Jew, or simply a maverick rabbi who

31. See nn. 9, 3 above.

32. *B. Yeb.* 23a; 44b; *Kid.* 68a.

33. *P. Yeb.* 4a.

34. This Jacob is an enigmatic person. It is difficult to determine whether he was a latter-day Qumranite (he required *shehitah*, ritual slaughter for fish, *Tanh. Hukat* 6), an Ebionite or Christian Jew, or simply a rabbinic maverick. See *Ecc. R.* 7:47 where he is called a "sinner."

35. Cf. *Gen. R.* 7:2; *Tanh. Hukat* 6. See also *Pesikta Rabbati* 14:9. Clearly, Jacob's exegesis of *Num.* 1:18, in tandem with *Gen.* 17:12, is a superior one.

was discountenanced, offered stronger torahitic evidence for considering a child of a non-Jewish woman and a Jewish man as Jewish by citing a very clear text at Num. 1:18 and taking it in accordance with its *peshat*, its simple meaning.³⁶ Jacob's flogging reflects the insecurity of his disputants concerning their innovation of the matrilineal principle based upon invalid exegesis. R. Hagai seeks to reinforce the Deut. 7:4 — Ezra 10:3 exegesis with Gen. 21:18, where the angel of God promises Hagar that God will make Ishmael into a "great people," *legoi gadol*.³⁷ This is a straightforward promise and, yet, R. Hagai wrenched the verse from its foundations and argued that, just as the son of Hagar would be a *goi*, that is, a non-Jew, so all children of non-Jewish women are non-Jews. This is manifestly unacceptable to modern scholars.

The foregoing cursory adumbration of a very complex problem that touches upon a ramified area of the halakhah of conversion, status, and mixed marriage leads to several conclusions. First, the primary biblical halakhah approves Judaic status to the children of non-Jewish mothers and Jewish fathers. Second, the rabbinic departure from this clear biblical view was an innovation based upon a culturally determined and historically limited bias. Contemporary culture and history calls for halakhic innovation which would reclaim and integrate thousands of Jewish children and enable Jewish outreach to express fully the latent universalism of Judaism. Third, if an argument is to be made that, by excluding these children, mixed marriage will be deterred, then children of Jewish mothers and gentile fathers should also be excluded. Fourth, the self-styled "orthodox" have no halakhic grounds on which to reject intermarriage with the children of groups where patrilineal status is recognized for children of non-Jewish mothers. Furthermore, their argument has little weight for it is self-evident that conversion of these children has no value since they, also, do not recognize non-"orthodox" conversions. Finally, in this age of the increasing recognition of the quality of men and women in all phases of the halakhah, the matrilineal and patrilineal principles in child status are equally anomalous.

Accordingly, contemporary halakhah should seek that halakhic precedent which best expresses the need of our historical circumstances. The narrowness of the Ezraic-Nehemian-Hasmonean-Pharisaic approach does not serve us at this time, but, rather, the realism of biblical pragmatism and the leniency of Jacob of Neburiah. He was paralleled and echoed in the *ʿamoraic* circles that refused to declare the child of a Jewish woman and a gentile father a *mamzer* even if they did not yet go as far as we ought to in order to declare as Jewish the child of a Jewish father and a gentile mother. The new halakhah of religious status in the case of a child of mixed parentage should simply declare that any child born to at least one Jewish parent is Jewish, there being no distinction as to which parent is Jewish, the only criterion being parental preference and mutual consent.

36. *Gen. R.* 7:2; *Num. R.* 19:3.

37. *Tanh. Hukat* 6.

A Reconstructionist View on Patrilineal Descent

JACOB J. STAUB

THE STIR CAUSED BY THE MARCH 1983 decision of the (Reform) Central Conference of American Rabbis (CCAR) to equate patrilineal and matrilineal descent is somewhat surprising. The resolution was not the first such statement by that body and, indeed, reflects the practice of Reform Jews over the last century.¹ It was also preceded both by a 1968 resolution of the Federation of Reconstructionist Congregations and Havurot (FRCH) and by a 1979 resolution of the Reconstructionist Rabbinical Association (RRA). That the 1983 CCAR resolution evoked such intense reactions on both sides of the question is, therefore, instructive. One of the arguments of this essay is that patrilineal descent is an idea whose time has arrived — in a way that was not true one or two decades ago, prior to the recent dramatic changes in the social position of North American Jews. It is the persuasive and compelling reasons in favor of patrilineal descent today that spur both its proponents as well as its opponents.

Reconstructionist Resolutions on Patrilineal Descent

The FRCH “Resolution Regarding Children of Mixed Marriages,” adopted on May 5, 1968, reads as follows:

... We hereby recommend the following procedures:

The parents of such children born of a Jewish father and a non-Jewish mother should be informed that, in many parts of the Jewish world, their children would not be recognized as Jews without undergoing the traditional forms of conversion.

We should further inform the parents that the Reconstructionist Movement and its affiliated institutions will consider these children Jews if the parents have committed themselves to rear their children as Jews by providing circumcision for boys, Jewish education for boys and girls, and if the children fulfill the requirements of bar/bat mitzvah or confirmation.²

The recent FRCH “Resolution on Inter-marriage,” adopted on June 16,

1. See, for example, the 1947 CCAR resolution on mixed marriage and intermarriage, *CCAR Annual*, Volume 57, and the 1961 edition of its *Rabbi's Manual*, p. 112.

2. “Resolution Regarding Children of Mixed Marriages,” *Reconstructionist* 34, 8 (5/31/68): 30.

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1984, concludes with a paragraph reaffirming the 1968 resolution “which regards as Jewish a child whose father or mother is Jewish, provided that the child is raised and educated as a Jew.”³

The RRA “Guidelines on Conversion,” adopted on January 16, 1979, concludes with the following paragraph:

If one parent is Jewish, either mother or father, the offspring is to be regarded as Jewish and should undergo the rites prescribed by our tradition (*b’rit milah* for boys, a covenantal naming ceremony for girls); but no special conversion procedure is required.⁴

The paragraph is essentially a clarifying footnote to an extensive discussion about the Reconstructionist approach to the conversion process and was not intended as a comprehensive statement on the topic of patrilineal descent. In context, it indicates that the RRA’s conversion procedures do not apply to infants who have one Jewish parent, when both parents demonstrate, as indicated, their intention to raise the child as a Jew.

In what follows, I will attempt to articulate the Reconstructionist position on patrilineal descent. That position does, as will be seen, overlap with the Reform position.

How and When Should the Tradition be Modified?

The overriding issue at stake in the debate involves the way in which decisions can, and should, be reached concerning Jewish practice. In the halakhic form of Judaism — which was established by the rabbis two millennia ago and which remained the predominant mode of Jewish life until the political emancipation of the Jews in the nineteenth century — the sphere of decision-making was left to the rabbi, the halakhic authority. Decisions were thus rendered on the basis of past precedent, and even innovative decisions required the claim of the past’s authority. The Oral Torah was considered a mere elaboration of the Written Torah, so that the recognized decisions of a rabbinic authority were accorded Sinaitic authority. The *mizvot* were believed to be divine commandments. While it is true that many rabbis continue to make decisions in their own lives on the basis of halakhah, the halakhic system really ended when most Jews stopped making most decisions on the basis of halakhah.

Historical research — such as Professor Cohen’s exemplary discussion here of the matrilineal principle — reveals unfailingly that this traditional claim for the essentially unchanging nature of halakhah is without factual basis. As Professor Cohen shows, our biblical ancestors’ patrilineal practices were altered by the rabbis — perhaps under the influence of

3. “Resolution on Inter-marriage,” *Reconstructionist* 50,1 (September, 1984), p. E of newsletter insert.

4. The “Guidelines on Conversion” document is appended to the RRA booklet, *Guidelines on Inter-marriage*, and is available from the RRA office, Church Road and Greenwood Avenue, Wyncote, PA, 19095.

Roman legal practice, perhaps because of the rabbis' preoccupation with forbidden mixtures. Scholars of the period will continue to establish plausible causes, and their findings illustrate the basic Reconstructionist definition of Judaism: as the evolving civilization of the Jewish people and one which reflects the ways in which the Jewish people have adapted to new circumstances and incorporated new beliefs and practices in their historical odyssey.

Professor Cohen concludes by stating that his historical analysis does not have halakhic implications. That assertion is consistent with the position of the Conservative movement, which promotes the research of historians while maintaining that the halakhah, itself, however it may have changed in the past and may be changed today, is the constant which unifies Jewish history.

Reconstructionists would disagree. It is not only the details of halakhah that have changed over the course of Jewish history. The halakhic system, itself, is a product of historical circumstances — circumstances which no longer apply today, as follows: 1) The Jewish community is no longer governed by halakhic law, as it was in the rabbinic and medieval periods, so that it is inaccurate to regard traditional Jewish practices as binding in a legal sense. 2) Non-Orthodox Jews who accept the historian's perspective cannot accept as literal the traditional claim that halakhah has the imperative force of divine commandment. At most, they can choose to revere the human interpretations of past generations, taking care, of course, that such reverence does not become idolatrous. 3) The very authoritative decision-making structure of the halakhic system contradicts our best contemporary intuitions about the value of the democratic process and the desirability of autonomous decisions reached by responsible individuals.⁵

In light of the diminished authority of halakhah in the contemporary era, Reconstructionists advocate changes in Jewish practice to adapt to unprecedented circumstances, even when no halakhic precedent can be found. (Sometimes the Conservative movement does so also, as in the 1974 *takkanah* of its Committee on Law and Standards allowing women to be counted in the *minyan*.)

The phenomenon of intermarriage among North American Jews provides a striking example of social circumstances that require bold and creative approaches. Because of the unprecedented social integration of Jews in the society at large, because of the radically new bases upon which Jews now choose their spouses, and for a variety of other causes, Jews now marry non-Jews as a matter of course. We can no longer assume that Jews who intermarry do so because of their desire to abandon their Jewish heritage. In an age of secularism, we can no longer assume that the

5. For further elaboration, see Jacob J. Staub, "The Sabbath in Reconstructionism," JUDAISM 31, 1 (Winter, 1982): 63-69.

non-Jewish partner is a committed, practicing member of another religious community. In the midst of the feminist revolution, we cannot assume that it is the mother, and not the father or some other adult, who assumes the primary responsibility for childraising. Nor can we assume, as was once possible, that the child of two Jewish parents will be raised as a Jew, in any meaningful sense of that term. Nor should we, living as we do so comfortably in a pluralistic society, make a virtue of retaining the rabbis' presumption that gentiles are of another, forbidden "species."

Given the unprecedented nature of our social circumstances and assuming, in principle, the virtue of modifying Jewish practice to meet those circumstances, there are several reasons for adopting the patrilineal principle.

A Sociological Imperative

First, sociological data indicates that large numbers of children are being raised as Jews even though their mothers were not Jewish at the time of their birth. When the rabbis established the matrilineal principle, the structure of the Jewish community and the surrounding society made the current situation unimaginable. At that time, the *de jure* status which children were accorded by *halakhah* matched the *de facto* reality — the matrilineal principle designated as Jews those children who were being raised as Jews.

When the *de facto* situation alters, as it has today, and the *de jure* status is not altered to match the current reality, rabbis are thrust into situations in which they are compelled to act against their better judgment and their desire to be sensitive and welcoming. Consider the frequent case of the son of a non-Jewish mother who has been raised as a Jew and who is required to undergo *hatafat dam b'rit* and *tevilah* prior to becoming *bar mitzvah*. Aside from the physical pain thus caused and the emotional turmoil engendered in a child and family who have lived as Jews, such a requirement communicates powerfully the message that Jewish identity is determined not by the way one's life is lived but, rather, by arbitrary ritual requirements which almost magically change one's persona. The rabbis who instituted the matrilineal principle, when such *de jure-de facto* discrepancies were virtually nonexistent, could not have intended to communicate such a message.

Embracing the Open Society

Second, the adoption of the patrilineal principle assumes a confident view of the current circumstances of, and future possibilities for, the Jewish community in an open society. Jews argue among themselves about whether North America's open society is a blessing — because it offers economic opportunity, political security, and cultural cross-fertilization — or a curse — because of the allure of assimilation which entices Jews

away from the tradition. Implicit in the advocacy of the patrilineal principle is the belief that, if we choose to live in an open society, we ought to do so confidently. To do otherwise is self-defeating.

Those who recoil at the thought that the patrilineal principle lowers our standards and opens the floodgates to a deluge of syncretism reflect an embattled mentality about the contaminating dangers of those gentiles with whom we interact daily. They assume the essential impossibility of non-ghettoized Jewish life, and one wonders why they have not yet undertaken the *mizvah* of *aliyah*.

Those, on the other hand, who are confident that Jewish life can flourish in an open society are not unaware of the challenges posed by assimilation. They do not, however, assume that Jewish survival is inversely proportional to Jewish integration. Recognizing the rate of intermarriage, they seek, with the patrilineal principle, to increase the permeability of the boundary which separates us from our non-Jewish neighbors, thus making it easier for people to be, and become, Jewish. Otherwise, we confront a situation in which it is easy for Jews to leave the community and incomparably more difficult for non-Jews to join it. For committed, liberal Jews, there are worse tragedies imaginable than the marriage of a Jew to a non-Jew — for example, the loss of tens of thousands of Jews, and their descendants, who want to live Jewish lives but who are barred by a defensive and insensitive community preoccupied with family trees.

The Challenge of Outreach

The third consideration follows from the second. We who are committed to the continuing vibrancy of the Jewish heritage are today afforded a great opportunity. In the current spiritual climate of North America, an increasing number of young people — once alienated by sterile religious school education and enticed by the now waning promise of universalism — are interested in establishing meaningful Jewish lives. They are open to, and, indeed, seeking, new avenues of return to the Jewish community. And they are as likely as not to be romantically involved with, or married to, non-Jews. Some are swept into the yeshivah world by the global wave of fundamentalism to which we are witness today. Most, however, are well-adjusted, socially entrenched, and in search of a form of Jewish renewal which is compatible with the rest of their lives: a form of authentic study of Jewish texts which does not equate sanctity with divine authorship; a mode of Jewish spiritual growth which allows in the transcendent without requiring the surrender of one's autonomy to an absolute authority; membership in a supportive and intimate Jewish community which does not derive its self-definition from the rejection of the goyim. Their sense of themselves as returning Jews is such that, when we tell them that their children aren't Jewish, we present them with a version

of Judaism which is not congruent with theirs. When we do so, we should not be surprised if they turn elsewhere in their quest for spiritual fulfillment.

Where they are welcomed, as in Reconstructionist congregations and in havurot, intermarried couples and their families are frequently an energizing force. They are often enthusiastically motivated in their learning and practice, precisely because Jewish practice in an intermarried home is challenging and problematical. And studies indicate that a significant percentage of those spouses do choose Judaism after the wedding and the birth of children, and that a significant percentage of the others would be open to Jewish identification were we to reach out to them.⁶

The pre-eminent challenge facing the Jewish community today is the development of ways to reach out and involve those who are peripheral to Judaism — those born Jewish but Jewishly uncommitted as well as those inclined to conversion. We who advocate the adoption of the patrilineal principle believe that the degree to which we are willing to be open to intermarried couples and their families is paradigmatic of our approach to outreach in general.

Gender Equality

Fourth, and most important to many, is the issue of gender equality. In the last ten to fifteen years, we have witnessed the extraordinary and rapid transformation of the non-Orthodox community, so that Jewish practices and positions are at least theoretically open to women. Committed as the Reconstructionists have been, since the movement's beginnings, to the principle of gender equality, we believe that the reconstruction of the Jewish civilization in this respect has only just begun. It will be a long time before Jewish women overcome the structural disability of being heir to a three-thousand-year-old tradition whose liturgy, philosophies, ritual practices, and concept of reality have been shaped by men. Committed liberal Jewish women and men must confront daily a tradition which reflects assumptions about appropriate sex roles which are at odds with both their beliefs and the way they live their lives.

In the case of matrilineal descent, it is Jewish men against whom the halakhic system discriminates. For those who struggle to render Jewish civilization non-sexist, this is yet another hurdle. It is not a matter of counting and balancing the disabilities which Jewish women and men respectively face. All such disabilities reflect the overall, unacceptable sexist assumptions of the tradition. In this case, men are supposed to assume the role of good providers and to leave the childraising to their wives. Today, men raise children, too, and a tradition whose legal assumptions are unliberated risks rapid obsolescence.

6. See, for example, Egon Mayer and Carl Sheingold, *Intermarriage and the Jewish Future* (New York: American Jewish Committee, 1979).

Here, too, we face the consequences of the discrepancy between current *de facto* reality and *de jure* assumptions inherited from another age. Given the high rate of divorce today, many Jewish men, divorced from non-Jewish wives, find that they lack the legal recourse to claim custody of the children or even, without custody, to insist that their children be given a Jewish education. On what can they base their claims when halakhic authorities disown their children?

Some Reconstructionists' Misgivings

Not all Reconstructionists have embraced the patrilineal principle unambivalently. Most notable among their concerns is the issue of the unity of *K'lal Yisrael*.⁷ By breaking so starkly with halakhah on a question of personal status, some fear that we are creating an irreversible schism, in which those in the halakhic community will deny the Jewish legitimacy of our children, refuse to allow their children to marry ours, and deny us our rights under Israel's Law of Return. Also, there is concern about the harmful consequences to innocent children who may be raised thinking themselves Jewish, only to find, subsequently, that halakhic Jews reject their identity.

Furthermore, the precise implementation of the patrilineal principle requires further clarification.⁸ There are two issues here. First, is the status of the child of a Jewish father to be made identical to that of a child of a Jewish mother? Traditionally, the child of a Jewish mother is Jewish in all circumstances. Both the 1979 RRA and the 1983 CCAR resolutions seem to imply that birth to a Jewish mother does not in itself suffice as a criterion of Jewish identity, if it is not accompanied by a Jewish upbringing. The 1968 FRCH resolution, by contrast, creates two separate categories — Jewishness by birth to a Jewish mother, and Jewishness by birth to a Jewish father if, and only if, it is accompanied by Jewish upbringing, education, and commitment. The 1984 FRCH reaffirmation of the 1968 FRCH resolution, however, seems to require Jewish upbringing, etc. in both cases. Work is under way to reconcile the two interpretations.

Second, what of the case of an adult — born of a Jewish mother, or a Jewish father, or *both* — who was not raised as a Jew and who now wishes to claim Jewish status? Here, the need is raised for clear guidelines concerning the requirements for Jewish recognition beyond birth or conversion. In the medieval world, a child of Jews would certainly live a Jewish life. Today, having two Jewish parents in no way guarantees even the most rudimentary Jewish identification. It is, thus, clear that the tradi-

7. See Richard A. Hirsh, "Jewish Identity and Patrilineal Descent: Some Second Thoughts," *Reconstructionist* 49, 5 (March, 1984): 27f., reprinted from *Raayonot* (Winter, 1984). For an even more unambiguous reaction by a Reform leader, see Jakob J. Petuchowski, "Toward Sectarianism," *Moment* 8, 8 (September, 1983): 34-36.

8. The discussion of Hirsh, *Op. cit.*, pp. 225-28, 34, is masterful in this regard.

tional birth criterion might be usefully modified. The precise nature of that modification requires further consideration and experience.

Because of these questions, some have suggested that patrilineal descent be applied selectively — that infant conversion should be encouraged (*lekhathilah*) when the opportunity presents itself and the parents are willing, but that, in cases (*bediavad*) where that does not occur and we are presented with children and adults who are Jewish except for conversion, the patrilineal principle should be invoked.⁹

Despite the significance of these misgivings, this writer finds the arguments in favor of patrilineal descent compelling.

K'lal Yisrael is an Unattainable Goal

As members of a numerically small people, with the loss of six million still fresh in our memories, and with the ever present threats of anti-Semites around the globe reminding us of our vulnerability, all Jews warm to the UJA slogan, “We are one.” Though we may be united in the front which we present to outsiders and in our support of Israel’s security, a united *K'lal Yisrael* is a noble ideal, not an attainable reality. And liberal Jews who are concerned about Jewish unity err when they blame themselves. Liberal Jews possess an ideology which could, indeed, allow for a pluralistic unity in diversity. It is not they who have difficulty according respect to Jewish movements and perspectives which differ from their own. It is, rather, Orthodox Jews who exhibit not the slightest inclination to admit the legitimacy of a united pluralism.

The adoption of patrilineal descent does not endanger Jewish unity. We are too willing to ignore the fact that even so-called “modern” Orthodox rabbis do not openly recognize the validity of conversions performed under non-Orthodox auspices — even when they are performed according to the halakhic requirements of *milah* and *tevilah* by rabbis who are *shomrei Shabbat* and *kashrut*. Because I am a Reconstructionist rabbi, it makes no difference at all to an Orthodox rabbi whether I require the conversion of a non-Jewish mother and her children or if I recognize the children’s Jewish identity on the basis of patrilineal descent. Were I to convert those children, they would be forced to submit to re-conversion by an Orthodox rabbi before he considered them sufficiently Jewish for a bar mizvah ceremony or for marriage to another Jew. A Reconstructionist, Reform, or Conservative rabbi cannot, by Orthodox definition, supervise a personal status procedure. In fact, the Orthodox mainstream is marching to the right, further from the non-Orthodox, thus making it more difficult for members of the Orthodox community interested in participating in a broader coalition.

One often encounters Conservative rabbis who labor under the illu-

9. Ibid.

sion that they are viewed differently by the Orthodox than are their Reconstructionist or Reform colleagues. Conservative Judaism may appear halakhic to Conservatives, but it is far from being so recognized by Orthodox Jews, who regard it scornfully. The attempt, last summer, by the Orthodox parties in Israel to demand an amendment to the Law of Return affected Conservative Jews as much as others and is yet another reminder of the Orthodox position.

Some may be surprised that a self-proclaimed Reconstructionist position denies the possibility of a unified *K'lal Yisrael*. After all, Mordecai M. Kaplan, the founder of Reconstructionism, was singularly dedicated to the unification of all Jewish parties. Kaplan's ideal, however, was not the homogenization of differences among Jews. His vision was of a single community center, supported by all Jewish parties, in which multiple services would take place simultaneously in different rooms. His vision, thus, understood the fact that liberal Jews find the Orthodox *mehizah*, for example, as offensive and intolerable as the Orthodox find gender equality.

Thus, Kaplan's noble ideal of *K'lal Yisrael* was based on the assumption that all Jewish parties could agree to disagree and could participate in a united *kehillah* which recognized and encouraged them in their differences. He, more than anyone, never advocated that differences should be repressed for the sake of homogenized unity. Given the current position of most Orthodox Jews and the direction in which they are headed, it is unrealistic to expect that non-Orthodox concessions will alter their views. At most, they seem to accept the non-Orthodox as lapsed Jews who are potential *baalei teshuvah*. Under these circumstances, policies based on the ideal of *K'lal Yisrael* are misguided.

The Vitality of the Historical Process

Contrary to attacks upon liberal Judaism as the minimalistic last step before apostasy, Reform and Reconstructionist Judaism have been responsible for "saving" hundreds of thousands of Jews who would have otherwise been lost to the Jewish community — and for leading them onto paths of increased observance and study. Though Orthodox Jews claim to be the sole legitimate heirs of traditional Judaism, liberal Jews regard the Orthodox as out of step with Jewish authenticity. If the Jewish tradition has, indeed, evolved for three millenia in creative, dramatic, and unpredictable directions, then proponents of continued change and adaptation are more authentic heirs than are advocates of the status quo.

Every serious student of Jewish history knows that one of its constants is repeated factional disputes during which it was impossible to predict the new form of so-called normative Judaism that would emerge. Pharisees and Sadducees, Geonim and Exilarchs, central academies and popular messianic movements, Babylonians and Palestinians, Rabbinites

and Karaites, Maimonideans and anti-Maimonideans, kabbalists and rationalists, Hasidim and *mitnagdim* — the list grows longer with more study and testifies to the dynamic character of our multifaceted heritage. It is not only incorrect to submit to the fallacy that all of these heresies were unsuccessful attempts to supplant a pristine and immutable form of rabbinic Judaism that beat back all challenges; such a fallacy is dangerous to the survival of a vital Jewish tradition. Those who triumphed in each instance appropriated the title of normative Judaism after the fact, often wrote accounts branding their opponents as heretical sectarians, and then proceeded to incorporate elements of their opponents' practices and beliefs into "normative" Judaism.

For those who accept a historical understanding of the evolution of Jewish civilization and who are committed Jews, the ever present imperative is to participate in the ongoing evolution of Judaism, so that it does not become an irrelevant relic. Everyone prefers to triumph, and it is frightening to contemplate the possibility that the dialectics of Jewish history may prove the principle of patrilineal descent, for example, to be a poor idea. But it is far worse for the committed liberal Jew to abandon her/his principles for the sake of unity. It is time to cease according undeserved respect to those who wait an extra decade or century before bowing to the inevitability of historical evolution.

It is time, because the gravity of the stakes involved in the debate is too great to forgive inaction. There are Jews to be reached who will be lost if we insist on adhering inflexibly to halakhic precedent. To do so is to assume that the Jewish tradition lacks the vitality to adapt to the revolutionary social changes which we now confront. Countless thousands of Jews, ripe for return, wait to see if the Jewish community has the courage, wisdom, and sensitivity that our ancestors applied time and time again when they faced revolutionary changes in Jewish circumstances. We are accustomed to crediting them with the remarkable survival of our tradition; time will tell if we are worthy successors.

Patrilineal Descent: A Response

BINYAMIN WALFISH

ALTHOUGH THE PATRILINEAL DESCENT Resolution enacted by the Central Conference of American Rabbis is certainly not the first, or only, resolution passed by the Reform rabbinate which breaches *halakhah*, nor is it necessarily the most serious violation of halakhic principle, it has evoked more reaction and comment than prior resolutions since Reform's initial break with *halakhah* and Jewish tradition. A cursory examination of Reform responsa denying such basic halakhic principles as *get*, Sabbath observance, *kashrut*, *brit milah*, etc. etc. is enough to convince one that the Reform movement is not committed to *halakhah* or to its validity or continuity as basically fundamental to Judaism and its survival. The question is, therefore, what is there about this particular issue which calls forth so much comment and analysis?

The answer is both simple and complex. Simply stated, patrilineal descent is an issue which goes to the very core of the question, "Who is a Jew?" Patrilineality redefines Jewish identity and it therefore involves all Jews. Parenthetically, the remedy for the problems that patrilineality may create is much simpler than the remedy for those created by marriage without *get* or marriages specifically forbidden in the Torah. Proper halakhic conversion can remove the problem of patrilineality while other problems are not so easily, if at all, remedied. Nevertheless, the reaction to patrilineality is highly vociferous and I believe that it is so because here is a vital issue.

A definition of Jewish identity is a subject which has been given much attention in Jewish thought and writings. It runs the gamut from the sublime — Jews as a faith group chosen by God to receive His Torah and to bring His message of morality, ethics, peace, brotherhood, etc. to the world — to the ridiculous — the gastronomic Jew who eats certain so-called Jewish foods at certain times of the year — and back to the in-between — Jews as an ethical, cultural, national or historic group sharing either common characteristics, literature, land or history and a future destiny. Whichever of the above definitions one chooses, no one of them satisfies the criterion of objectivity. Each is subject to the interpretation of the individual who chooses to categorize himself or herself as a Jew according to any of the above definitions. What is faith, what is meant by "chosen people," what is culture, what is land, are obviously the subject of much debate and difference of opinion among Jews. But whether one

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accepts the halakhic definition or not one cannot deny that it is the only objective definition of who is a Jew. Who is a Jew? A person who is born of a Jewish mother. Who is a Jewish mother? She who is born of a Jewish mother, etc. etc. To quote Professor M.H. Vogel:

Thus the traditional halachic definition determining the Jew in terms of the Jewishness of the mother . . . is far from simple-minded, crude tribalism; . . . It is merely being faithful to the objective reality of the Jewish phenomenon.¹

If we accept the centrality and objectivity of the halakhic definition of "Who is a Jew?" we can begin to understand why tampering (I use the term advisedly) with this definition elicits such widespread reaction.

However, one cannot ignore those other considerations which have become part of the debate on patrilineality. Political, emotional, sociological and historical factors have their place, albeit secondary ones, in discussions of the issue.

Professor S. Cohen's article is a valid case in point. Professor Cohen is very forthright, honest and fair in stating at the outset of his article: "In spite of the relevance of the topic, this essay focuses on history, not Halaka," and he concludes his paper with: "Does my analysis have Halakic implications? The answer is no."

I cannot, therefore, disagree with his conclusions from an halakhic point of view (although I disagree vehemently with his evaluations and comments concerning those whom he designates as "fundamentalist," who believe that all of Rabbinic law was revealed to Moses). I suffer from the additional disadvantage of not being an historian and I hesitate, therefore, to question his conclusions on an historical basis. However, some observations are in order.

I am a firm believer that every discipline, history and halakhah included, must be if not rational, then at least logical in its conclusions. I fail to see, therefore, why Professor Cohen accepts the historicity of matrilineality as a rabbinic concept enacted in Talmudic times based on the suggestion that it may have been Roman in origin while rejecting the possibility that the account in Ezra lends biblical credibility to matrilineality. He certainly does not have any conclusive proof of his assumption. It would seem that, logically, the Rabbis of the Talmud based their opinion on the account in Ezra and it is entirely possible that the exegetical interpretation of the Biblical verse in Deuteronomy (*Kiddushin* 68:) was based on a tradition handed down from Biblical times. It is no less plausible or historical than Professor Cohen's suggestion that the Rabbis took their ideas from the Romans. On the contrary, given the difficulty with the

1. *Journal of Reform Judaism* (Winter 1983):32. While I do not agree with Professor Vogel's suggestion that the Jewishness of the father may also be a determining factor of Jewishness (since this violates my belief that the halakhah is divinely ordained and is inviolate) his exposition of the halakhic definition of Jewish identity is excellent.

verses in Deuteronomy (7:3-4) it is more logical to assume that the Rabbis received these traditions from prior generations who interpreted the verses in accordance with procedure and law established in Biblical times, as witnessed by events in the book of Ezra. Professor Cohen himself writes: "This view may be correct, but is not necessarily so; other explanations are possible."

No doubt there are other possibilities, but why sow foreign Roman vineyards and reap the whirlwinds of divisiveness when we can cultivate our own gardens, which can bring peace and tranquility to an already fragmented Jewish community?

Professor Cohen's second suggestion is equally illogical. To suggest that the Rabbis of the Talmud equated human reproduction with the mixed breeding of animals borders on the absurd. It is totally out of character with the manner in which the Talmud deals with the inherent worth of the human being as compared to the animal world. To suggest that the question of the status of the issue of a mixed marriage of Jew and gentile is equivalent to the questions concerning *kilayim* in animals and that this is "an organic part of rabbinic thought" is illogical and not in keeping with the halakhic principles which the Rabbis attributed to these two widely divergent concepts. Again, it is difficult for me to accept a premise which is, at the very least, logically questionable.

Sociologically, patrilineality is equally illogical. There is general agreement that intermarriage is one of the most serious problems facing the Jewish community, especially in America. Patrilineality is being heralded as one of the solutions to this problem. Is it logical to assume that one can stem the tide of intermarriage by making it a *less* objectionable alternative? Logically, the opposite is true. If we are to solve the problem of intermarriage it will not be by accepting the inevitability of its consequences, but, rather, by educating Jews to the dangers inherent in it, to its debilitating influence on the future of the Jewish people and to the dangers that it poses to our survival as a faith community.

I am aware of the statistics and the claim that we are in danger of extinction as a people due to minus zero population growth and the high rate of intermarriage. The argument is advanced, therefore, that, in order to survive, we must reach out to those who intermarry and encourage them to live as Jews. I wholeheartedly support these efforts and believe that they should be fostered and encouraged — but not, however, at the expense of thousands of years of Jewish tradition and law. Abandoning our own principles to encourage converts is not, and never has been, the panacea for Jewish survival. On the contrary, remaining faithful to our tradition and steadfastly upholding Jewish law have been the foundations of Jewish survival.

I do not here address myself to the question of *Giyyur K'halakhah*. I do, however, imply that, at the very least, conversion to Judaism should be demanded of those who have chosen to remove themselves from the

mainstream of Jewish tradition through intermarriage. To grant “presumption” of Jewishness automatically to the child of one who is married to a gentile woman is to break with our tradition. To reward (again I use the word advisedly) this breach of Jewish law by granting Jewish status to the issue of such a marriage, in contradiction to halakhah, only because 70% of intermarriages are between Jewish men and gentile women is to exacerbate the problem rather than to solve it. If you will ask, “why should not the same provision be required when the mother is Jewish and father a gentile,” my answer is “because Jewish law and tradition do not demand it.” Why the halakhah made the distinction is a subject of great interest and much discussion, but regardless of the rationale for the halakhah, the basic, fundamental fact is that changing the halakhah will not solve the problem of intermarriage. On the contrary, it grants to the intermarriage a certain Jewish status which it does not deserve and removes the one impediment to it which might discourage it.

One further thought in respect to Jewish survival. Does not the further polarization of the Jewish community created by patrilineality pose a greater threat to Jewish survival than the imagined loss of intermarried couples? Is it worth creating a schismatic Jewish community in which Jewish men and women may not be able to marry each other, for the purpose of bringing into the Jewish fold those who willingly and knowingly left it through intermarriage; all for the very uncertain result that they and their children might choose to return? I cannot, therefore, justify patrilineality for sociological reasons. On the contrary, if I may be permitted the pun, I find them rather socio-illogical.

One final thought. Professor Cohen and others² have stated that, in Biblical times, offspring of intermarried couples were judged patrilineally. Numerous Biblical examples are given; Judah, Joseph, Moses, Gideon, King Solomon among others. It should be noted that all of the examples in the Pentateuch occurred before *Matan Torah*, which automatically nullifies them as proof of Biblical Law. The examples of post-*Matan Tora* intermarriages prove nothing since: 1. the Bible in these cases does not address itself to the Jewishness of the offspring (in the case of Solomon’s many wives); 2. in those cases of the children of “foreign” wives who ascended the throne we have no evidence that the wives were not converted to Judaism (after all, by that time conversion to Judaism was not uncommon); 3. the assumption that Gideon’s concubine was a Canaanite is just that — an assumption.

Clearly, what we have in all of these cases is circumstantial evidence of patrilineality. If there was not a clearly stated halakhic contradiction to patrilineality based on Biblical exegesis one might consider the circumstantial evidence which, incidentally, is never accepted in Jewish jurisprudence, as some proof of patrilineality. Given the halakhic

2. P. Hiatt and B. Zlotowitz, “Biblical and Rabbinic Sources on Patrilineal Descent,” *Ibid.*: 43.

contradictions, I cannot accept these examples as a proof. They are assertions which may, or may not, be valid.

The fact that, Biblically, family lineage is patrilineal again proves nothing. There are various halakhic reasons for patrilineality in these matters. In the case of the Kohanim and Leviim, only the male offspring served in the Temple. To define a Kohen or Levi matrilineally would, therefore, create a situation where the father, if he were an Israelite, would not be permitted to serve in the Temple while his son, by a mother who was a descendant of a Kohen or a Levi, would be permitted to do so. Such a situation would obviously be an intolerable one.

In the genealogical table of the Bible, patrilineality was used because those tables were primarily a way of identification for inheritance purposes. The laws of inheritance are patrilineal and correctly so, since, halakhically, a woman's possessions went to her husband upon marriage. It was necessary, therefore, to identify the male descendancy of the family in order to establish property or inheritance rights.

Here, again, we have an attempt, based on circumstantial and inconclusive evidence, to prove Biblical patrilineality in order to establish matrilineal descent as a later Rabbinic innovation, while, on the other hand, we have in the Talmud a specific statement establishing matrilineality based on the interpretations of a Biblical verse which would otherwise be difficult to understand. Even if we were to assume that the proof from the Talmud for matrilineality is not any more conclusive or valid than those mentioned above for patrilineality, the other considerations that I have mentioned should be enough to give pause to the Reform rabbinate concerning the advisability of having passed a patrilineal resolution.

All things being equal, in the final analysis, one can only conclude that the patrilineal resolution is the classic example of *Yaza S'haro B'hef-sedo*. Whatever the questionable gains, the losses greatly overshadow them.

Matriliny — a Survival of Polygyny

TRUDE WEISS-ROSMARIN

WHILE THE CRITICAL-COMPARATIVE EXAMINATION of societal institutions is conducive to suggestions such as Shaye J.D. Cohen's that "in all likelihood the transition [from patriliney to matriliney] was occasioned by the influx of Roman ideas," those who think in terms of this "likelihood" should ponder that, as Boaz Cohen wrote:

More often than not, in order to determine whether the apparent parallels or differences have any validity or not, it will be necessary to inquire into the underlying principles and motivations of the rules in question. This means familiarity with the philosophy of law, or some phase of it.¹

In a study of the "Law of Persons"² Boaz Cohen draws attention (but does not draw conclusions) to "some interesting parallels between Jewish and Roman law with respect to the status of children born of irregular marriages."³ He notes, as does Shaye J.D. Cohen, that "in Roman law, in *de Statu Liberorum*, we find the same four basic principles as in the Mishna, *Kiddushin* III, 12, if we make allowances for certain deviations in the Roman law due to the different family setup."⁴ In "Law of Persons," Boaz Cohen traces the discussions of these Mishnaic principles by the Tannaim and the Amoraim, with extensive references to Roman law. But, notwithstanding the many "interesting parallels," he does not draw the conclusion that the Tannaim were influenced by the *de Statu Liberorum*. Like the German scholar, Hitzig, who was critical of superficial conclusions from comparisons of Greek and other systems of law, Boaz Cohen disapproves of "*dilletantischer Vermutung*."⁵ The resemblance, as he sees it, between the Jewish and Roman "Law of Persons" is due to the fact that the Rabbis of the Talmud and the Roman jurists "were admirable casuists" and, as such, "faced with identical problems they reached 'elegant solutions'"⁶ — elegant and virtually identical.

The period during which the Mishna was in its final stages of discussion, before being edited (ca. 200), was marked by the *Bar-Kochba* illusions of Jewish independence and the Hadrianic and post-Hadrianic persecutions⁷ — a time not conducive to what Shaye J.D. Cohen refers to

1. Boaz Cohen, *Jewish and Roman Law: A Comparative Study* (New York, 1966), Vol. 1, page xi.

2. *Proceedings of the American Academy of Jewish Research*, Vol. XVI (1947) pp. 1-37, reprinted in Cohen's *Jewish and Roman Law*, Vol. 1, pp. 122-268.

3. *Ibid.*, p. 133.

4. *Ibid.*, p. 134.

5. *Ibid.*, p. xi.

6. *Ibid.*, p. 158.

7. Yehoshafat Harkabi, *The Bar Kokhba Syndrome* (Chappaqua, N.Y. 1983).

as “the influx of Roman ideas.” Concerning his notion that Mishnaic marriage laws, with emphasis on matrilineity, were influenced by “the rabbinic interest in mixtures of all sorts,” it is a *non sequitur* in the context of the Jewish regard for man (*every person*) as being created in “the image of God,” metaphorically understood, to trace Jewish personal laws to the mating of horses and donkeys as Shaye J. D. Cohen does. As for mules, they are, indeed, a new species — a species which does not mate or propagate.⁸

Matrilineity is, in more ways than one, “peculiar” in talmudic-rabbinic personal law which, in halakhically valid marriages, completely ignores the mother’s family identity. Only the father’s family is *family*, as far as the children are concerned. *Mishpahat av keruyah mishpahah*, the father’s family is called family (*Yevamot* 54: b).

According to talmudic-rabbinic law, the children’s religious identity is that of the mother, while their family identity is that of the father. The family identity, however, applies *only* to children of *halakhically* valid marriages, that is, when both husband and wife are Jews. In that case, the children are known as sons and daughters of the father. The mother’s name is not mentioned in official-religious documents, such as the *ketubah* and the *get*. At the *b’rith* (circumcision) a boy is named “Yizhak ben Avraham,” without reference to the mother’s name — and the *Hebrew* inscriptions on tombstones refer only to the father of the one whose last resting place is marked by the memorial.

The children of a halakhically valid marriage acquire the tribal identity of the father, but not that of the mother. The son of a *kohen* (member of a priestly family who trace their identity to Aaron, the priest), is a *kohen*, entitled to the prerogatives of his rank, i.e., to receive the first *aliyah* at the reading of the Torah, to bless the congregation, to redeem the first-born son at the *pidyon haben*. He is prohibited from marrying a divorcee or a childless widow who has obtained *halizah* (release from the biblically commanded levirate marriage). *Kohanim* are also bound by a residue of biblical purity laws applying to them. They are forbidden contact with the dead, to attend funerals except for close blood relations or to visit cemeteries. Similarly, the son of a father who traces his ancestry to the Levites, is a *levi* and in synagogues where such ranks are honored, he receives the second *aliyah* at the Torah reading and performs the washing of the hands of the *kohanim*. The patriarchal order, therefore, is the norm of Jewish personal law in its entirety. Under the *huppah*, the bride is silent. She is *being married*, acquired (*nikneit*), and the *ketubah* makes no mention that *she takes this man as her husband*. It is the *husband* who “acquires” her and, thus, only the husband can dissolve the marriage by divorce (*get*). This exclusive right of Jewish husbands has inflicted untold woe and tragedy on very large numbers of Jewish women and continues to do so.

8. Elijah Judah Schochet, *Animal Life in Jewish Tradition* (New York, 1984), pp. 190 f.

In the diaspora, Reform, Reconstructionist, and also some Conservative Rabbis do not observe Jewish personal law. *If* these laws were to be applied to American Jewry today, hundreds of thousands of Jews would not pass muster as “Jews” when interrogated by the Israel Rabbinate. Moreover, it is not only children of mothers who were born Christians and were “improperly converted,” as defined by the Orthodox, who are not accepted as Jews in Israel. There is also the grave problem of the *mamzerim* and *mamzerot* (bastards), that is, children born to mothers who have remarried without being halakhically divorced. As Reform Jews have dispensed with the halakhic *get*, and divorce and remarriage are high, there are very many such “bastards.” These persons cannot contract *halakhic* marriages with Jews who are not *mamzerim/mamzerot*.

In Israel, these problems of halakhah are not theoretical or limited to Orthodox Jews, because there, Jewish identity is a *political* issue of citizenship privileges, such as the right of the Law of Return, and an identity card with the entry “Jew,” which confers the right to be married to a Jew.

Almost since Israel's Declaration of Independence (1948) the legal problem of Jewish identity has given rise to Cabinet crises and acrimonious debates. In 1958, the dilemma of “Who is a Jew” under *Israeli* law, and how to register children of mixed marriages, with a Jewish father and a non-Jewish mother, had come to such a point of crisis that Prime Minister David Ben-Gurion addressed a letter (dated 13 Heshvan 5710 — October 27, 1958) to “*hakhmei yisrael*” — the scholars in Israel — soliciting their “opinion on the course which we should pursue in the registration of the children of mixed marriages both of whose parents — both the Jewish father and the non-Jewish mother — wish to register their children as Jews.”⁹

While most of the *hakhmei yisrael* whom Ben-Gurion consulted were Orthodox rabbis and scholars who upheld the matrilineal principle of Jewish identity, most of those not identified with Orthodoxy, too, upheld the matrilineal descent halakhah. Thus, Mordecai M. Kaplan, suggested a “compromise,” that is, to register “the child of a non-Jewish mother as a ‘Jewish resident,’” but not as a Jew. Kaplan did not want the Israeli Government “to infringe upon the accepted religious norms or touch upon questions relating to religious tradition.”¹⁰ Harry A. Wolfson, too, did not agree to patriliney of Jewishness. He suggested, instead, to use the term “Hebrew,” in a purely national sense, as a replacement of Jew and Israeli in Israel.¹¹

The Israeli author, Haim Hazaz, held, however, that “there is no more exalted characteristic than that of a mother who gives her son,

9. For Ben-Gurion's “Letter” and the replies received, see *Jewish Identity: Modern Responsa and Opinions. A Documentary Compilation* by Baruch Litvin, edited by Sidney B. Hoenig (New York, 1965).

10. *Jewish Identity*, p. 235.

11. *Ibid.*, p. 257.

treasured above all else, to a people that is not her own.”¹² Still, Hazaz made circumcision (but not conversion) a condition of registering a boy as a Jew (the case of girls is not considered . . .).

Justice Haim Cohn of the Israel Supreme Court held that, while in the Diaspora the Rabbis

may require conclusive evidence of Jewish birth or of conversion to Judaism; in Israel there is neither necessity nor justification for such a procedure . . . everybody who says “I am a Jew” is as a matter of fact accepted as such. And a man who says: “I was non-Jewish but have been converted to Judaism,” is on the fact of that statement accepted as a fully qualified Jew.¹³

The replies of the scholars to Ben-Gurion’s inquiry are studded with talmudic and rabbinic references upholding matrilineal Jewishness, while generously allowing for the Jewishness of converts “in compliance with *halakhah*.” Even those not committed to Orthodoxy agree with Solomon Zeitlin’s conclusion that “No one can ignore history.”¹⁴ And Jewish history has recorded, for almost two thousand years, that Jewish religious identity is transmitted by the Jewish *mother* — and not by the Jewish *father*.

But what is missing in the forty-five “Responsa” is an attempt to explain the *inconsistency* of matrilineal Jewish identity determination in the context of the all-pervasive Jewish patriarchal family constitution.

In my opinion, matrilineal Jewish identity is a relic of polygyny, prevalent in biblical times, tolerated and halakhically valid in the mishnaic and talmudic near-millennium, and basic to the talmudic-rabbinic definition of the Seventh Commandment (You shall not commit adultery — Exodus 20:13) in contemporary halakhah as well. Notwithstanding Rabbenu Gershon’s ban on polygyny for Ashkenazi Jews only, and the requirement of the wife’s consent to accept the *get*, the halakhah is, that when a Jewish husband remarries without a *get*, his children are not tainted as “bastards” as are the children of the Jewish wife who remarries without first having obtained a *get*. Such a woman is, according to halakhah, an “adulteress.” But no such stigma is attached to the husband. According to Louis M. Epstein:

Adultery is possible only on the side of the wife, because she is the property of her husband, but not on the part of the husband. The male can commit adultery only when he cohabits with the wife of another man. In other words, the wife owes faithfulness to her own marriage; the husband owes faithfulness to another man’s marriage. . . . Insofar as the marriage bond is concerned, the husband has his freedom with other women to marry them or to live with them without marriage; the wife can have no other men because she is owned by her husband. This conclusion, with slight modifications by talmudic and post-talmudic, law has been accepted by Judaism down to the present age.¹⁵

12. Ibid., p. 278.

13. Ibid., p. 257.

14. Ibid., p. 390.

15. *Sex Laws and Customs in Judaism* (New York, 1948), p. 194.

In polygamous marriages, each wife has her own dwelling which she shares with her children and where the husband is a visitor: When a wife or a concubine is “sent away,” as was Hagar by Abraham and Zipporah by Moses, the spurned woman returns to her family with her children. Thus, when Jethro, Moses’ father-in-law, visited Moses in the wilderness, “he took Zipporah, Moses’ wife, after she had been sent home and *her* (my emphasis) two sons” (Exodus 18:6); note *her* two sons.

In a polygamous society, legitimacy is conferred upon the children by the father, but — and this applies especially when the wife is sent away with the children — the national-religious identity is that of the mother, *unless* it is stated that the children of the “foreign” wife are accepted as having the father’s religion. Thus, when Joseph brought his two sons, Manasseh and Ephraim, who were born to him by Asenath, daughter of Potiphera, priest of On (Genesis 41:50), to his dying father, Jacob said: “Now, your two sons, who were born to you in the land of Egypt before I came to you in Egypt, shall be mine, Ephraim and Manassah shall be mine no less than Reuben and Simon” (Genesis 48:5). Moreover, in keeping with Jacob’s words, “By you shall Israel invoke blessings, saying: ‘God make you like Ephraim and Manassah’” (Genesis 48:20), Jewish parents invoke Jacob’s blessings to this very day, when blessing their sons on Friday evening.

That the children of the respective wives in a polygamous marriage were reckoned as *their* children except when otherwise stated, is also evident from the account of how Jacob, anticipating the encounter with Esau, grouped his family according to the rank of the women and his love for them, “putting the maids and their children first, Leah and her children next, and Rachel and Joseph last” (Genesis 33:2).

There are many more biblical texts which prove that in the polygamous biblical society a wife regarded her children as *hers*, in a very special sense, rather than “ours” in equal share with their father. For example, Hannah took charge of her son Samuel and brought him to Eli, as she had vowed (I. Samuel, chapter 1).

Inevitably, jealousy and rivalry exist among women who share one man. The Bible records many such cases. And, inevitably, each woman is intent upon securing first place for her child or children, even if, as was the case of Solomon, that son is not in succession to the throne, as the first-born of the father usually was. Yet, when King David was on his deathbed, and Adonijah had already been proclaimed King, Bathsheba managed to remind and prod David to keep his promise that *her* son would succeed to the throne. And so it came to pass (I Kings, chapter 1). As for Bathsheba, the wife of Uriah the Hittite, with whom David had lain while her husband was alive and whose death he engineered when Bathsheba was pregnant, hers is one of the most dramatic and most human stories of the Bible. The Sages’ endeavor to clear her and David of adultery is not very convincing. It does not report anything about Bathsheba’s

genealogy, but, as she was married to a Hittite, her Hebrew identity may be questioned. And, according to talmudic-rabbinic halakhah, Bathsheba — *if* she was a Hebrew — was an adulteress and, hence, her son and his sons were tainted with *mamzerut*.

Biblical law has been reinterpreted over the millenia, but the *basis* of talmudic-rabbinic halakhah is still biblical, especially with respect to personal law. Even today, “adultery is possible only on the side of the wife,” and the traditional laws of divorce and *halizah* continue to operate. I suggest that matrilineal determination of Jewish religious identity is another relic of biblical custom associated with polygamy, like the Seventh Commandment, which even *now* applies only to Jewish *women*.

The *halakhah* of matrilineal descent requires revision because contemporary Jewish society is monogamous. It is high time that the relics of our polygamous past be removed, with women being freed from their disabilities under Jewish law and *men being given equal rights to transmit Jewish identity to their children by non-Jewish wives*, when both mother and father consent.

Ezra’s method of restoring the cohesiveness and the identity of the remnant of Judah who had not been exiled to Babylonia, when he returned with some of “the children of the captivity” (Ezra 8:35), by demanding “a covenant” that those who had married “foreign wives” “put away all the wives, and such as are born of them” (Ezra 10:3), became the real and definitive halakhic basis of the religious determination of Jewishness that only the child of a Jewish mother is Jewish. In the early years of the Second Jewish Commonwealth, when the remnant in Judah and the returners from Persia were few and embattled, Ezra’s “reform” was necessary, even imperative. On the other hand, the Bible attests that taking “foreign wives” was rather usual and that, when the marriage endured, as in the case of Joseph, the children were members of the Children of Israel, as were Ephraim and Manasseh. However, when the wife or the concubine was “dismissed” and sent away with her children, the offspring were “legitimate,” that is, the father acknowledged his paternity — but they were not of the community of the Children of Israel, owing to their having been “sent away” (as was Ishmael) or “sent home with their mother” (as were the two sons of Moses) to another nation.

Matriliney is widespread in polygamous societies. It has no place in a monogamous society, such as the contemporary Jewish one. Far from weakening the Jewish community, emancipating the Jewish father by conferring upon him the right of transmitting his Jewish identity to his children, with the non-Jewish mother’s consent, will increase our numbers and thus add strength to our Jewish survival potential.

“In historical perspective,” halakhic matriliney is to be traced to Ezra. I do not minimize the importance of research with an “historical perspective,” especially when done with the thoroughness of Shaye Cohen. But we also need *advocacy* of change — change imperative owing

to *present-day* needs. For me, this need of revising the matrilineic exclusivity is highlighted in the following case history:

After filling me in on some of the details of my Scholar-in-Residence Weekend at Temple B., Mrs. X, who collected me at the airport, complained with much bitterness that her son, a graduate student at the Hebrew University of Jerusalem, who is planning to settle in Israel, was refused a marriage license by the Rabbinate because he was not a Jew. There was no problem with his fiancée, the daughter of an Orthodox family who, Mrs. X said ironically, furnished proof that she was “a kosher Jew.” Upon my question about her son’s problem, Mrs. X said that her husband’s grandfather (their family name is unmistakably Jewish) was married to a Christian woman who never converted to Judaism. “My husband’s grandfather was a Bundist and a secular Jew. My husband’s father, too, married out and his wife, too did not become a Jew. But my husband was circumcised as a baby by a surgeon. Lightning struck thrice in our family,” she continued, “I was born a Methodist but was converted to Judaism by the Reform rabbi who married us, twenty-three years ago, when both of us were in our early twenties. My husband and I are very active in the Jewish community and in our Temple. We visited Israel twice and our son wants to live in Israel. He was circumcised by our pediatrician and both he and our two daughters, eighteen and sixteen respectively had a Bar and a Bat Mizva, and later Confirmation. So imagine our shock when our son was declared ‘not Jewish’ in Israel. For *three* generations we are a Jewish family — going back to my husband’s grandfather. I am a good Jew, an officer of our Temple — yet the rabbis in Israel decided that I am *not* Jewish and neither is my son. We are devastated, completely devastated.”

When I suggested to Mrs. X that her son’s difficulties could be resolved with an Orthodox conversion, she replied, angrily, that this would mean breaking faith with her and her family’s past and imply that *her* rabbi, whom she respects and reveres, is not qualified as a rabbi. “My son and I — and this goes also for my husband, who considers himself a Jew because his grandfather and father were Jews, and our daughters, of course, *are* Jews.”

Advocating patrilineal Jewish identity, on a par with matrilineal Jewishness, implies, as I see it, compliance with *ritual* circumcision of boys and conferring of a Jewish/Hebrew name upon girls at an appropriate religious ceremony. However, it does not require immersion in the *mikveh* (impossible for neonates) and, consequently, suspension of their recognition as Jews.

I am well aware that *advocacy* is just *advocacy* — and this fact is amply supported by talmudic evidence which shows that *advocacy* by some of the most eminent Sages was rejected by a majority of their colleagues.

I am not so deluded as to expect that, although adopted by Reform Judaism, patrilineal acceptance of Jewish identity will be accepted by the contemporary “*hakhmei yisrael*” — in Israel and the Diaspora. But the advocacy should be placed on record, as a matter of conscience and the commitment to freedom of expression.

Patrilineal Descent and the Jewish Identity Crisis

WALTER S. WURZBURGER

FEW RELIGIOUS CONTROVERSIES HAVE SO polarized the Jewish community as has the patrilineal descent issue. Even such a relatively moderate Orthodox group as the Rabbinical Council of America found it necessary to establish a special commission to re-examine its relationship to Reform in the wake of the rejection of the matrilineal principle by the Central Conference of American Rabbis.

At first sight it seems strange that such acrimony should have developed from what seems only one more in a long series of violations of fundamental halakhic principles. To be sure, Halakhah unequivocally stipulates that being born to a Jewish mother is both a necessary and sufficient condition for being regarded as a Jew by birth. But Reform has never professed loyalty to Rabbinic Judaism. On the contrary, since its very inception, Reform openly and unabashedly declared its independence from the authority of the Halakhah. Why, then, should what amounts merely to another link in the long chain of categorical repudiations of halakhic principles send such shock waves through the Jewish community? Can it really be claimed that the rejection of the halakhic criteria for the determination of Jewish status constitutes a more blatant violation of Jewish Law than the sanctioning of *Hillul Shabbat* (even shifting Sabbath "Observance" to Sunday), abolition of *Kashrut* and *Taharat Hamishpahah*, or the substitution of a civil divorce for the *Get*?

It has been suggested that if patrilineal descent has caused so much friction, it is not because of purely halakhic considerations, but because of deeply felt concern for the unity of the Jewish people. Individuals claiming Jewish status on the basis of patrilineal descent would be treated as non-Jews by those who accept traditional standards. Large segments of the Jewish community refuse to "inter-marry" with Reform families out of fear that the latter may not be Jewish. After all, even such an avowed secularist as Ben Gurion granted to the Orthodox Rabbinate exclusive jurisdiction over marriages and divorces in order to forestall the possibility that the Jewish people would be split into various sects which, for religious reasons, would frown upon inter-marriage between them.

While these considerations weigh heavily with many opponents of the new Reform policy, they cannot adequately account for the extreme

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bitterness and divisiveness that was engendered by the CCAR resolutions. Patrilineal descent is far from being the most serious threat to Jewish unity. It does not even begin to compare with the irreparable damage to Jewish unity that resulted from the Reform policy of sanctioning re-marriage without a *Get*. If a woman were to remarry solely on the basis of a civil divorce, her off-spring would be a *Mamzer*, permanently disqualified from marrying any other individual who is not similarly stigmatized. There is no possibility of remedying this unfortunate condition. On the other hand, the consequences of the patrilineal descent resolution are not quite so drastic. Although the off-spring of a non-Jewish mother would be regarded as a non-Jew by traditional Jews, there still remains the option of a subsequent conversion to Judaism which would remove obstacles to marrying other Jews (except *Kohanim*).

We must, therefore, ask ourselves why patrilineal descent has provoked such sharp reaction. After all, there is ample historic precedent for problems concerning marriages between various segments of the Jewish people. The Mishnah records differences of opinion between the schools of Hillel and Shammai concerning the legitimacy of various Levirate marriages (*Yevamot* 1:3). The only reason why this did not lead to an outright ban against all "inter-marriages" was a Gentlemen's Agreement not to conceal any pertinent data. Each school could be confident that if there were any impediments to any given marriage, in accordance with their interpretation of the Law, such information would not be withheld by the other party. Moreover, the Jewish community always included elitist groups that were especially particular with respect to matter of *Yihus* (genealogy) and would consent to marriages involving members of their own families only when they were assured that a prospective spouse came from a family equally careful about *Yihus*.

The sharpness of the reaction to patrilineal descent must, therefore, go beyond mere concern over the fragmentation of the Jewish people into groups that refuse to inter-marry with one another. We have learned to live with less than perfect conditions — especially when it comes to the issue of Jewish unity. A possible explanation for the passion stirred by the patrilineal descent resolution lies elsewhere.

Modern Jewry suffers from an identity crisis. We are so confused that we become extremely touchy when questions as to the meaning of Jewish identity are raised. But this is hardly the first major battle waged over this issue. For a long time, attention has been riveted on the troublesome "who is a Jew" issue which has become a major factor in Israeli political life. It is no secret that Reform and Orthodoxy clash over the definition of Jewishness. Since Reform, for over a hundred years, has waived the requirement of *Milah* (circumcision) and *Tevilah* (immersion) for conversion, Orthodoxy has no choice but to dismiss such conversion procedures as utterly meaningless. Viewed from the vantage point of Halakhah, an *Avel* (uncircumcised) "convert" to Judaism is certainly no

less an absurdity than is the bestowal of Jewish identity through recourse to patrilineal descent.

But it is one thing to argue about the adequacy of methods and procedures, and another to challenge completely the very nature of Jewish identity. To appreciate fully the revolutionary nature of a patrilineal descent resolution, it is essential to bear in mind that the new Reform policy amounts not merely to a revision of the procedures required to gain admission to the ranks of the Jewish people, but it constitutes the rejection of the biological, ethnic dimension of the covenantal existence of the Jew. It strikes at the very roots of Jewish existence. According to the classical conception, Jewish identity is not a matter of a Jew's voluntary choice, but is imposed upon those who qualify by birth for membership in the Jewish people. Anyone born to a Jewish mother automatically acquires Jewish identity. It should be emphasized that Reform does not merely contravene Talmudic Law by granting to the father the same rights as previously were accorded to the mother, but categorically rejects the notion that, in any inter-marriage, Jewish identity is automatically transmitted by a parent. According to the new ruling, being born to a Jewish parent merely gives rise to the presumption of Jewish descent, which subsequently must be "established through appropriate and timely public and formal acts." In other words, in mixed marriages, Jewishness ceases to be acquired simply by birth. It becomes a matter of voluntary self-identification. Whereas, traditionally, being born to a Jewish mother was both a necessary and sufficient condition of being regarded as a Jew by birth, the new Reform procedure challenges this hereditary aspect of Jewish identity and substitutes for it the purely voluntary act of self-identification. We should question why Reform limits this requirement only to children of mixed marriages. Following the same logic, they should maintain that even for the offspring of two Jewish parents, it should be necessary that "the presumption of Jewish identity be subsequently established through formal public acts."

The paramount importance assigned to voluntary self-identification as a criterion of Jewishness for children of mixed marriages amounts to a rejection of the ethnic, "tribal" component of Jewish identity. Historically, Jewish identity was never regarded as a function of purely voluntary affiliation with a religious denomination. Any attempt to define Jewishness in terms of religious denomination is an exercise in futility (witness the ill-fated efforts of the Central Organization of German Jews of the Mosaic faith!). Judaism has always operated with the premise that the accident of birth imposes upon an individual the irrevocable responsibilities and obligations associated with Jewish identity. Once acquired, be it by birth or by conversion, one cannot renounce one's Jewish identity. Every Jew is bound by the terms of the Covenant, irrespective of his/her personal philosophy or belief. "Once a Jew, always a Jew." Even a convert to Judaism cannot divest himself of his Jewishness. Were the acquisition of Jewish

identity merely a matter of the profession of a religious faith, it would be logical to maintain that, upon the renunciation of this faith, one would revert to one's original status as a non-Jew. Acquiring Jewish identity through conversion, however, involves much more than merely the acceptance of the tenets and practices of Judaism. One becomes part and parcel of the Jewish people and, therefore, subject to all the conditions governing Jews. As the Book of Ruth sums up the essence of conversion to Judaism, "Your people be my people and your God be my God." Jewish Law views conversion not merely as an acceptance of the duties incumbent upon Jews, but as the emergence of a new personal identity. Strictly speaking, all previous familial ties become dissolved because "a convert to Judaism is treated as a newly born child."

One cannot help but feel that Reform's substitution of "presumed Jewish status for children born to mixed marriages" for the traditional matrilineal principle constitutes another phase in the effort that began in the pre-Emancipation era and sought to facilitate the entry of the Jew into the modern world. To accommodate the requirements of modernity, which places such a premium on the autonomous decision of the individual rather than on group loyalty, Reform converted Judaism from a community of faith and fate into what was, allegedly, purely a community of belief. Viewed from historic perspective, the patrilineal resolution strikes one as the resurgence of the classical Reform aim of purging Judaism of its "tribal" elements in order to transform it into pure spirituality devoid of all natural and ethnic components. But the effort to deprive Judaism of its uniqueness by de-naturalizing it to such an extent that it can be forced into the Procrustean bed of a modern religious denomination is doomed to be an exercise in futility.

It has been claimed that the revolutionary break with Jewish tradition could be legitimized by invoking the claims of historic scholarship or textual analysis which purport to show that, already in antiquity, there were periods when the patrilineal rather than the matrilineal principle held sway. But it must be emphasized that the historic date of the original adoption of the matrilineal principle is totally irrelevant to our contemporary situation. However one might wish to interpret the Biblical texts, it must be borne in mind that Judaism is not merely based upon the Bible. We are not Lutherans who contend that each individual is responsible for determining for himself the meaning of God's revealed word. For us, the Bible, insofar as normative practice is concerned, must be interpreted in accordance with the hermeneutical rules and canons of interpretation of Rabbinic Judaism. Halakhic opinions which have crystallized over the centuries cannot be set aside by contemporary scholars, especially since *Semikhah* was discontinued at the beginning of the Amoraic period. The evolution of the Oral Torah must be governed by the principles of the *Massorah*. Any attempt to replace the accepted procedures for halakhic decision-making with alternate methods — be they based upon critical

textual analysis or the finding of historic scholarship — undermines the very foundation of the *Massorah* and endangers the historic continuity of the Jewish people.

The patrilineal descent controversy may yet prove to be a blessing in disguise. It may succeed in arousing us from our denominational slumbers by making us conscious of the gravity and urgency of the problem posed by the disintegration of the Jewish people. The situation is extremely critical. To survive as one people we must develop a consensus on the conditions of Jewish identity — by birth or by conversion.

Things are not as bad as they seem; they are worse! The patrilineal descent controversy is merely a most obvious part of the syndrome caused by the authority crisis which afflicts modern Jewish life. Unless all segments of the Jewish community are ready to accept halakhic standards for the determination of Jewish identity, the process of disintegration cannot be halted. Appeals to good will and tolerance are of no avail. With the best of intentions, it will be impossible for halakhically oriented Jews to accept as a full-fledged member of *Klal Yisrael* any individual who does not satisfy the halakhic standards of Jewish identity.

No compromise is possible. Religion is neither business or politics, where differences can be settled by mutual concessions. Jewish history records that after the golden age of the reign of King Solomon, the Kingdom was split. Shall it be said that, after the Jewish people regained its sovereignty with the establishment of the State of Israel, it was internally rent asunder because it could not find a uniform, halakhically acceptable formula for the determination of Jewish identity?

Can History Teach Halakhah?

ALAN YUTER

PROFESSOR SHAYE J.D. COHEN'S ESSAY, "The Matrilineal Principal in Historical Prespective"¹ is an intriguing instance of historical reconstruction by a Jewish scholar committed to Jewish law and life. As a secular historian, he examines his materials dispassionately. At the same time, Professor Cohen is a committed Jew who directs his remarks to those who, like himself, share a "modern historical approach to Jewish tradition."² He concludes that the matrilineal principle evolved in rabbinic times not so much as a response to wars, rape, and an alleged indeterminable paternity,³ but as a consequence of Roman civil usage⁴ and the Israelite-Jewish avoidance of forbidden mixtures.⁵ This historical reconstruction and Cohen's evaluation of its social and religious consequences are the result of a thoughtful and provocative approach that strives to be intellectually honest and religiously faithful.

While Cohen concedes that his reconstruction is conjectural, it is, nevertheless, more plausible than the interpretations offered by Reform spokespeople who claim that the apparent patrilineality of ancient Israel justifies their deviation from the more recent matrilineal usage. His refutation of liberal Judaism's partisan use of historical analysis requires that the objective methodologies and consensus of halakhah and history be applied dispassionately and with integrity:

Jewish law, like other legal systems, is based on precedent, and what the historian can contribute to Halakha is the collection of precedents and the analysis of legal history. But history and Halakha are autonomous disciplines, each with its own methods, assumptions, and goals, and the historian cannot tell the jurist which precedent to follow or which decision to adopt.⁶

1. The lead essay in this issue.

2. *Ibid.*, p. 13.

3. *Ibid.*, pp. 9-10.

4. *Ibid.*, pp. 11-12.

5. *Ibid.*, pp. 12-13, Cohen properly calls attention to Professor Jacob Neusner's illuminating study of mixtures in the Mishnah; see Jacob Neusner, *Judaism: Evidence from the Mishnah* (Chicago: University of Chicago, 1981), pp. 256-270. Neusner's examination of the mishnaic concern for materials that defy classification is an insightful application of Mary Douglas's study of disorder and dirt in ancient society. See her *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (London: Routledge, Kegan, and Paul, 1966) especially chapters 3, 5, and 6.

6. Cohen, p. 13.

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While primarily a historian, Professor Cohen is also adept in the philosophical examination of halakhic texts. His examination is historical, not legal. He recognizes that prescriptive halakhah and history are not only autonomous disciplines; they reflect two radically different perspectives to their objects. For the rabbi or jurist, halakhah is a normative, prescriptive order. The historian, in general, and the historian of halakhah in particular, offers suggestive interpretations of the past; prescriptive halakhah necessarily makes value judgments that historiography may not. However, history may inform the jurist, whose biases are subject to historical analysis. Halakhah and history are not only different disciplines; the former, as practiced by theologians, judges, and rabbis is normative and value laden, while the latter is objective and, ideally, value free.

Even if ancient Israel determined personal status patrilineally, that fact would be halakhically irrelevant. The fundamentalist will dismiss that historical possibility out of hand, while the "historical" scholar will concede that Judaism, as we know it, has adopted matrilineality. Consequently, Professor Cohen astutely terms the Reform approach to this issue as "non-linear," for Reform Judaism will accept a child into its community if either parent is Jewish,⁷ and its approach is not truly grounded in historical precedent. If one appeals to ancient Israel for a substantive precedent, then the Reform Movement must apply that ancient rule consistently and reject matrilineality. But the appeal to ancient Israel is rhetorical and, to this reviewer, disingenuous. Reform Jews are not Biblical Israelites who are bound by an early stage of Israelite law; they are guided by the Jewish past as autonomous individuals who select from a tradition that has no direct divine mandate.⁸

Since Professor Cohen is not only an eminent historian, but a professing and committed Jew, he is personally concerned with the consequences of his approach and their resultant findings for Jewish life:

I am not speaking to those fundamentalists who believe that all of rabbinic law was revealed to Moses at Mount Sinai, because they, in principle, oppose both historical scholarship and halakhic reforms. I am speaking to those who accept, as I do, a modern, historical approach to Jewish tradition.⁹

7. *American Reform Responsa*, (N.Y. University Press/CCAR, 1983), pp. 547-550.

8. *Ibid.*, p. 4: "nothing would, therefore, hinder us as Reform Jews from readopting customs once omitted if a new generation finds them meaningful and useful in its practice of Judaism. We have always understood that such customs, when adopted by us, do not represent a divine enactment. In other words, we are willing to change in both directions." According to Rabbi Eugene B. Borowitz, an eminent Reform thinker, "liberal Jews believe that human beings are responsible for both the Written and Oral Tora. Our sacred texts and contemporary sages have much to teach us but they do not legislate for us. Liberals insist on the freedom to determine for themselves which aspects of their inherited faith they will continue to observe and what in their belief now requires the creation of new forms." (*Liberal Judaism* [New York: Union of American Hebrew Congregations, 1984], pp. 323-324).

9. Cohen, p. 13.

If, indeed, Cohen's reconstruction does not have halakhic implications, then the rejection of the Sinaitic revelation is irrelevant. Further, one can advocate an orthodox ideology and still recognize that changes have occurred which may be considered to be "reforms" in certain circles.¹⁰ Fundamentalists concede that changes in Jewish practice have occurred and will continue to do so; they merely argue that those accommodations are grounded in principle and precedent, and their agenda and criteria for change differ from those of their more liberal coreligionists.¹¹ Like the late Professor Boaz Cohen¹² of the Conservative Movement and Menachem Elon¹³ of Jerusalem's Hebrew University Law School, Professor Cohen enlists history to provide a modern religious myth of Jewish living. But the myth of scholarship is grounded in a "methodological atheism,"¹⁴ and not in the faith of a living community. Ahad ha-Am rightly distinguished between the "archeological" Moses who walked the earth, and the "historical" Moses who appears in the rabbinic tradition.¹⁵ The secular scholar of religion studies *historie*, but insofar as that person is part of a faith community, that person lives and believes *geschichte*.¹⁶

The application of this distinction to halakhic discourse is crucial. Shaye J.D. Cohen claims that matrilineal descent is not Biblical,¹⁷ by which he means that Biblical law does not recognize matrilineality. However, the Biblical text is a literary and historical source of law,¹⁸ not a legal one. The norms derived from the Bible by the rabbis are *legal* sources of halakhah. A legal source of law is the result of the normative act of legislation, not the historical impetus for legislation, or even the fact that a norm is recorded in a code — unless that code was legislated. There is no

10. See Borowitz, p. 321, for a demonstration that there are alternative patterns of Orthodox practice. The Orthodox authority, J.D. Bleich, contends that "although the Torah itself is immutable, the Sages teach that the interpretation of its many laws and regulations is entirely within the province of human intellect." (*Contemporary Halakhic Problems*: [New York: Ktav and Yeshiva, 1977] p. xiv).

11. For example, Bleich deals thoroughly with the responsa that discourage or forbid conversions for those candidates who will not adopt a strictly orthodox life pattern, but relegates the more liberal view of the late Rabbi Ben Zion Uziel to a footnote. See also *Mishpetei Uziel*, *Even ha-Ezer*, no. 1, and *Pisqei Uziel*, no. 65. For Bleich, views that do not conform to his view of the halakhic consensus are ignored. He and R. Uziel have different orthodox philosophies of law and decision making; R. Uziel's leniency in this area is apparently a source of embarrassment for R. Bleich.

12. Boaz Cohen, "Towards a Philosophy of Jewish Law," *Law and Tradition in Judaism* (New York: JTSA, 1959), p. 26f.

13. Menachem Elon, *Jewish Law: History, Sources, Principles* (Hebrew) (Jerusalem: Magnes Press, 1973) p. 133f.

14. Peter L. Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Anchor, 1969), p. 100.

15. Ahad ha-Am, "Moshe," in *Kol Kitvei Ahad ha-Am* (Jerusalem: Ivrit, 1961), p. 342.

16. Berger, p. 168.

17. Cohen, p. 7.

18. Elon, pp. 211-215, and 942-944.

such code in Judaism, for Elon correctly observes that halakhah preserves *compilations*, or *records* of legislation, rather than codes that are, in and of themselves, authoritative.¹⁹ Biblical law has significance to the historian, but not to the halakhist. Professors Jose Faur and Mayer Gruber have convincingly shown that *de-orayta* legislation is Toraitic,²⁰ or covenantal, but not necessarily Biblical. Only when so interpreted by the rabbinate does a rule become part of the *Oral Torah*. According to the norms recorded in the Oral Torah, matrilineality is the authoritative halakhic principle recorded in the official compilations that are accepted by the practicing community. The place of historical criticism in Professor Cohen's argument requires further theological clarification. If the findings of historical research have *nothing* to add to the halakhic decision-making process, then the fundamentalist and critical scholar committed to halakhah will arrive at similar conclusions. On the other hand, if the value-free relativism that underlies historical scholarship dissipates zeal and commitment in the practicing community, then one is hard pressed to dismiss the Reform position on the grounds that the tradition is absolute.

I concur with Professor Cohen that Jewish Law can be studied with the tools of the social scientist or humanist. But this secular analysis, which is grounded in a neutral, value-free methodology, can have only limited prescriptive consequences. A historical consciousness reflects the distance of the objective observing outsider. The dogmatic, or internal prescriptive approach used by the jurist assumes that there are principles that *ought* to be applied, in a given community or state.²¹ While the objective distance of a critical outsider is informative, it provides no criteria for prescriptive application. The community that takes its legal order seriously invests that legal order's proscriptions with validity.²²

The above reservations notwithstanding, Professor Cohen has offered two significant contributions in his essay: that the Reformist appeal to "history" in defense of its changes is spurious, and that the methodologies of halakhah and historiography are distinct in their scope, premises and concerns. The current defense of patrilineal or non-lineal descent on the basis of what is imputed to ancient Israel is based upon a faulty application of historical scholarship. While it may be, as Professor

19. Hans Kelsen, *Pure Theory of Law* (Berkeley, Los Angeles, and London), p. 232.

20. Jose Faur, *Studies in the Mishne Torah* (Jerusalem: Rav Kook, 1978), p. 19f, and Mayer Gruber, "The Meaning of *Orayta* in the Babylonian 'Talmud,'" *Hebrew Studies* 22 (1981): 28-31.

21. Dogmatic research into law is the "systematic elaboration of the normative material from a standpoint of acceptance of the authoritative character of all relevant legal sources. The dogmatic approach requires the recognition of the basic assumptions of the system: the reasoning must proceed according to the 'rules of the game,' inside the normative framework." (Itzhak Englard, "Research in Jewish Law," in Bernard S. Jackson, *Modern Research in Jewish Law* [Leiden, E.J. Brill, 1980] pp. 27-28).

22. For Kelsen, "effectiveness (is) a condition for the validity" of law (p. 213).

Haym Soloveitchik has suggested, that “halakhic texts can talk history,”²³ history cannot prescribe halakhah. History can only clarify and describe. The historian can provide a statement of what *is*;²⁴ the living community contributes the prescriptive *ought*. The critical scholar ought to look to the living community of faithful adherents for the prescriptive development of Jewish Law.

23. “Can Halakhic Texts Talk History?” *AJS Review* 3 (1978): 152 f.

24. In evaluating what the codes, compilations, or records of legislation actually prescribe, historical and philological analyses are useful. The normative jurist must have a precise understanding of the legal document in order to offer an appropriate prescriptive ruling. The objective scholar supplies the normative practitioner with information by providing statements of what is *legal* reality; the jurist, *poseq*, rabbi has the primary function of responsibly applying the tradition as it is understood on the basis of the best available information, for one can not make good law on the basis of faulty scholarship. (For the place of philological and historical scholarship in legal decision making, see Mieczysław Maneli, *Juridical Positivism and Human Rights* [New York: Hippocrene, 1981], pp. 107-110.)

Englard defines the essential methodological difference between the historical and dogmatic approach to law in general and halakhah in particular:

The historical approach is different (than the dogmatic approach-author): it views the legal system “from the outside” as an empirical reality. It strives for an understanding of that reality against the background of its various causes. History’s interest lies in the elucidation of events which brought about the specific reality. If we take a given system of law, the aim of dogmatics is its *application*; the aim of history, on the other hand, is the understanding of its *formative process* (Englard, *loc. cit.*).

A Perspective on Patrilineal Descent

BERNARD M. ZLOTOWITZ

BUT FOR EZRA, MATRILINEAL DESCENT might not have come into existence in Jewish law. Under pressure from the Jewish aristocracy and indirectly influenced by laws then current in Rome and Athens, he was able to change the biblical practice of the time, thereby altering the means by which Jewish status was determined and generating controversy that continues to plague us to this day.

Some laws are instituted to retain the integrity of the community, maintain its rights, and assure its perpetuation, as, for example, those dealing with the rights and privileges of citizenship. Among them is a body of Jewish law concerning what has preserved the identity of the Jewish Community and assured its ongoing existence, namely the determination, "Who is a Jew?" This concern was as pervasive in the biblical and talmudic periods as it is today, and the question has arisen in every period of Jewish history.

In our day, it was revived by David Ben-Gurion in connection with the Israeli Law of Return of 1949 and, more recently, by Rabbi Alexander M. Schindler who has proposed that Jewish identity be transmitted by either the mother *or* father. With the rise of mixed marriage, the problem has become acute, just as it was in biblical and talmudic days. In the biblical period, the religious status of the child was transmitted through the father (patrilineal descent). "And all the congregation they assembled together . . . and they were enrolled in the lists of the pedigrees after their families, by the descent from their fathers . . ."¹

Repeatedly, in the Bible, pedigree is traced that way. The children of Jewish men and foreign women are Jewish: Manasseh and Ephraim, children of Joseph and Asenath, an Egyptian,² Gershom and Eliezer, children of Moses and Zipporah, a Midianitess,³ Rehoboam (who succeeds Solomon on the throne of Judah), son of Solomon and Naamah, an Ammonitess;⁴ and Ahaziah (a king of Israel), son of Ahab and Jezebel, a foreigner and an idolatress,⁵ to cite but a few examples.⁶ Tracing the reli-

1. Numbers 1:18.

2. Gen. 41:45, 50-52.

3. Ex. 2:21, 22; 18:2-6; 1 Chron. 23:15-17.

4. 1 Kings 14:21.

5. 1 Kings 22:40.

6. For a more detailed analysis, see Phillip Hiat and Bernard M. Zlotowitz, "Biblical and Rabbinic Sources on Patrilineal Descent," *Journal of Reform Judaism* (Winter, 1983): 43-48.

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gion of the children through the father's line remained sacrosanct until Ezra, following the return from Babylonian captivity, arbitrarily drove out the foreign wives and their children⁷ and introduced the principle of matrilineal descent.

In all probability, Ezra's action was in part due to powerful forces then current in the Mediterranean region, forces opposed to marriages between citizens and non-citizens in order to maintain both the purity and the exclusiveness of the ruling group. In Rome, marriage was confined to members of the patrician class and only the offspring of such marriages were granted Roman citizenship. The offspring resulting from the union of a patrician and a person of another class could not be Roman citizens "nor represent either family or state in any capacity."⁸ When the Canuleian Law of 445 B.C.E. (contemporaneous with Ezra) permitted intermarriage between patricians and plebeians, the former vehemently opposed the law on the basis "that it would contaminate their blood."⁹

Athenian law under Pericles, who was a contemporary of Ezra, conferred citizenship only upon the children of Athenian citizens. Where one parent was not a citizen, citizenship was denied.

The law was not immediately enforced and seems to have been generally regarded as a dead letter; but when occasion later arose, the consequences, as recounted by Plutarch, make the proceedings in Ezra 10 appear tame by comparison. Nearly five thousand were proved to be the offspring of such illegitimate alliances, and were not only struck from the register of citizens but sold into slavery.¹⁰

Similarly, Ezra sought to maintain Jewish "purity," group self-preservation, and exclusiveness. Even Moore points out emphatically that Judaism's continuity was the result of Ezra's emphasis on preserving the purity of the Jewish people in a manner similar to that employed by the Romans and the Athenians. Because "the Jews under Persian rule had no political existence," Moore states, "they had only a national religion, and in its preservation lay their self-preservation."¹¹

But as opposed as Ezra was to intermarriage, he might have allowed the foreign wives to remain had it not been for the urging of one of the nobles, Shecaniah, to cast them out.

And Shecaniah . . . answered and said unto Ezra: "We have broken faith with our God, and have married foreign women of the peoples of the land; yet now there is hope for Israel concerning this thing. Now therefore let us make a covenant with our God to put away all the wives, and such as are born of them, according to the counsel of the Lord." . . . Then arose Ezra, and made the chiefs of the priests, the Levites, and all Israel, to swear that

7. Ezra 10:1-44.

8. George Foot Moore, *Judaism* (Harvard University Press, 1904), Vol. I, p. 20.

9. *Ibid.*

10. *Ibid.*

11. *Ibid.*, p. 21.

they would do according to this word. So they swore . . . And Ezra, the priest, stood up and said unto them: "Ye have broken faith, and have married foreign women, to increase the guilt of Israel. Now therefore make confession unto the Lord, the God of your fathers, and do His pleasure; and separate yourselves from the peoples of the land, and from the foreign women." Then all the congregation answered and said with a loud voice: "As thou hast said, so it is for us to do."¹²

The text implies or reflects a long-standing opposition to marrying foreign women. Perhaps this goes back to the prohibition,

neither shalt thou make marriages with them; thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son, for he will turn away thy son from following Me, that they may serve other gods; so will the anger of the Lord be kindled against you. . . .¹³

If there had not been this custom and biblical prohibition, Ezra could not have come to remonstrate with the people and Shecaniah would have been unable to incite him to go beyond chastising the people and insist that they put away their foreign wives and children. Based upon earlier biblical precedent, Ezra could insist that the husband not only had the right, but the duty, to drive out his wife and children as Abraham drove out Hagar and Ishmael.¹⁴

Ezra's act was not without its opposition, as the Bible itself notes.¹⁵ Scholars agree that the Book of Ruth was written as a polemic against his action and was intentionally predated to the time of the Judges to show that, had the Jews lived by Ezra's teaching, there never would have been a King David, since he traces his descent from a Jew, Boaz, and a Moabitess, Ruth.

Although the Book of Ezra is silent about foreign husbands married to Jewish women, it is not so for the reason that Dr. Shaye J.D. Cohen claims, that "such marriages are generally ignored by biblical texts,"¹⁶ but because such marriages fit into Ezra's concept of matrilineal descent. With the introduction of this new law into Judaism, Ezra planted the seeds for the later ambivalent rabbinic attitude concerning the status of the children of mixed marriages, especially in cases where the mother is Jewish. Are such children legitimate or *mamzerim*? The new law created problems that continually plagued the rabbis and took centuries to resolve. Even then, difficulties persisted.

According to *Yevamot* 7:5, the child of a Jewish mother and a slave or a non-Jewish father is considered a *mamzer* (i.e., is Jewish but disqualified from entering into certain marriages). This, then, was the halakhah at the time of the redaction of the Mishnah in the year 200 C.E. However, the

12. Ezra 10:2-5, 10-12.

13. Deut. 7:3, 4.

14. Gen. 21:10 ff.

15. Ezra 10:15.

16. p. 8.

gemara, some 300 years later, declares that the child of a Jewish mother and a non-Jewish father is unqualifiedly Jewish while the child of a Jewish father and a non-Jewish mother is not a Jew in any sense and is certainly not a *mamzer*. The gemara restricts the designation *mamzer* to the offspring of two Jews who cannot contract a valid marriage with each other.¹⁷

According to Prof. Cohen, these mishnaic laws were instituted as a result of the indirect influence of Roman law which, he claims, is the origin of matrilineal descent. It is probably true that these *mishnayot* were somewhat influenced by Roman law in the matter of status but not of matrilineal descent, which, as has already been demonstrated, was first introduced by Ezra and, therefore, to argue that it did not exist prior to this time and to ignore Ezra's actions, as Cohen does, is to misinterpret history.

Dr. Cohen correctly points out that Roman law held that only in *jus-tum matrimonium* (a legal marriage) was the offspring the legal heir and in the custody of the father. In the case of marriages between a Roman citizen and a non-Roman citizen, the marriage was valid but the child followed the status of the mother. Thus, if the mother was a non-citizen, the child was not a citizen. However, exceptions to this law existed. For example, as Professor Cohen points out, if a Roman matron married a non-citizen, the child followed the father, who is of a lower status (*Lex Minicia*). Or, if a Roman matron was impregnated by a slave, the child was declared a slave (according to a law enacted under Claudius). However, in matrilineal descent as evolved by Ezra, the Jewish status of the child is determined exclusively by the mother. If Roman law did play a significant role, as Dr. Cohen contends, and status followed the mother, that was true only if the mother was a non-citizen. In cases where the mother was a citizen, the child followed the lower status. Thus, Jewish matrilineal descent as recorded in the Mishnah did not follow Roman law but was, rather, a reaffirmation of Ezra's law.

It is plausible that the theory behind the halakhah concerning religious status is that it was enacted not only to preserve Jewish purity, exclusiveness, and the Jewish people, but also to penalize the man, since it was he who chose a wife and was, therefore, responsible for intermarriage. Following Ezra's decree, Jewish men were impelled to marry Jewish women; otherwise, their children would not be reckoned as Jews. But women who had their mates chosen for them, were not to be penalized for an act beyond their control.

Still, the rabbis were troubled by the exclusiveness of matrilineal descent since it was contrary to biblical practice. This concern with the validity of matrilineal descent continues to reflect itself in Talmudic thinking. If matrilineal descent is *halakhah l'mosheh misinai*, how does one

17. *Kid.* 68a & b; *Yevamot* 45b; see also *Tosefta Kid.* 4:16.

explain the Jewishness of the children of biblical heroes whose mothers are not Jewish? By interpreting "For he will turn away thy son from following me"¹⁸ to mean "thy grandson," a grandfather clause was introduced and the Jewishness of the children of the biblical heroes was validated.¹⁹

But this still did not solve the problem completely nor did it put patrilineal descent to rest. In *Baba Batra* 109b, it is reaffirmed: "The family of the father is considered family; the family of the mother is not considered family." Thus, alongside matrilineal descent, patrilineal was preserved, especially in the priesthood where "pure" genealogical lines were essential.

If the betrothal was valid and no transgression befell (by reason of the marriage), the standing of the offspring follows that of the male (parent). Such is the case when a woman is the daughter of a priest, a Levite, or an Israelite.²⁰

The same holds true for naming children who take their father's name. And if the father is a Kohen or a Levi, or the mother is the daughter of a Kohen or Levi no *pidyon haben* takes place, a further throwback to patrilineal descent.

Jacob of Kefar Nibburaya (4th century) upheld the legitimacy of patrilineal descent when, in the city of Tyre, he was asked: "Is it permissible to circumcise the son of an Aramean woman (and a Jewish man) on the Sabbath?" He concluded that it is permissible on the basis of Num. 1:18: "And they declared their pedigrees after the families, by their fathers' houses. . . ."²¹ Rabbi Jacob claimed that he had a right to teach this. The rabbis disagreed and flogged him. Nevertheless, the debate continued to rage.

No less an authority than Rabbi Moses Isserles (16th century) similarly upheld the legitimacy of patrilineal descent:

It appears to me that basically it is unlawful to have sexual relations with her. Some are of the opinion that the prohibition is biblical; namely that the child follows the status of the slave or the non-Jewess, but on the basis of the rabbis, the child is to be regarded as his, as the Jew's offspring (and is thus Jewish). But in view of the doubt one must be rigorous from the outset.²²

A simple analogy with tools will help explain Isserles' text. According to the Torah, one is not prohibited from handling tools on the Sabbath, only from working. But the rabbis, to insure the observance of the statute of keeping the Sabbath, put a fence around the law and prohibited the handling of certain tools lest they be used for doing work. If we under-

18. Deut. 7:4.

19. *Kid.* 68b, especially Rashi here and on Deut. 7:4; see also Hiat and Zlotowitz, *Op. cit.*, pp. 47-48.

20. *Kid.* 3:12 (Danby's translation).

21. P. *Yevamot* 4a.

22. *Eben Ha'Ezer* 15:10.

stand Isserles correctly, he is admitting that, whereas patrilineal descent obtained in the Torah, the rabbis — to put a fence around the Torah — instituted matrilineal descent to discourage intermarriage. For Isserles to use the expression, “It appears to me,” is indicative of the confusion surrounding matrilineal descent even in his time.

The debate continued unabated in the *Shulhan Arukh*, where conflicting views appear. In the case of a child of a Gentile mother and a Jewish father, there is an inference that such a child should be circumcised, but not on the Sabbath.²³ Those rabbis who wished to be lenient (favoring the patrilineal line) would use this law to support their argument. Those rabbis favoring matrilineal descent would use Isserles’ comment in connection with another law that if a man is in *herem* (under the ban of excommunication) the Beth Din may declare that his children not be circumcised²⁴ and apply it to our case.

But, in the 16th century, the foremost halakhist, Joseph Caro, implies that a non-Jewish woman’s son may be circumcised and her son has some valid claim to membership in the Jewish people. The son of a Jewish man and a non-Jewish woman may not be circumcised on Shabbat but on another day and he has some valid, but limited, claim on membership in the Jewish Community. The immutable halakhah of 1555 is not so immutable as it is questionable.

Solomon Freehof points out that “Orthodox law is not objective” and that “one of the sources of difficulty in the situation is not so much what the law is, but the *attitude* of the Rabbis.”²⁵ Rabbi Freehof’s view of halakhah has certainly been confirmed in our own day. I need cite only two cases: Brother Daniel and David Ben-Gurion’s grandson. Brother Daniel, son of Jewish parents, converted to Christianity and applied for Israeli citizenship under the Law of Return. Halakhically, he is a Jew, albeit a sinning one. (*Afal pi shehatah, yisrael hu*,²⁶ though originally referring to the people Israel, was later interpreted by the rabbis to include individuals as well.) The Israeli Rabbinat, which has jurisdiction over personal status, refused to deal with the case, knowing full well that Brother Daniel was a Jew and, as such, entitled to Israeli citizenship on the basis of two halakhot — matrilineal descent (in this case that was not even an issue, as both parents were Jews) and the teaching that a convert to another religion is still a Jew. Following the rabbinat’s refusal to deal with the problem, the secular arm of the government adjudicated the matter, determining that Brother Daniel was no longer considered Jewish and, therefore, not entitled to Israeli citizenship under the Law of

23. *Yoreh Deah* 266:13.

24. *Yoreh Deah* 334:6. See also Solomon B. Freehof, “This Tendency Toward Cumulative Restrictiveness,” *Who Is A Jew — A Reader*, compiled and edited by Rabbi Solomon S. Bernards (Anti-Defamation League of B’nai B’rith, no date), p. 33.

25. Freehof, *Op. cit.*, p. 33.

26. *Sanhedrin* 44a.

Return. The Israeli Rabbinate's refusal to deal with the case proved the truth of Freehof's observation that halakhah is a matter of attitude.

In another case, attitude also played a significant role when the Israeli Rabbinate refused to recognize the conversion to Judaism of Ben-Gurion's daughter-in-law because it had been performed by a Reform Rabbi. She gave birth to a boy on Shabbat, and on the following Shabbat the *brit* was scheduled *al pi halakhah* (according to Jewish law), but the Israeli Rabbinate forbade the ceremony as they did not recognize the Jewishness of the child. Krushev's grandchild is Jewish because his son married a Jewish woman but Ben-Gurion's is not!

What, then, should be our attitude today regarding patrilineal descent? Are the needs of the Jewish Community being met by the halakhic ruling of matrilineal descent, or should both patrilineal and matrilineal descent influence a child's status? The Central Conference of American Rabbis declared, in 1983, "That the child of one Jewish parent is under presumption of Jewish descent," i.e., descent is not sufficient, alone. Such a child will be considered Jewish only after identifying with the Jewish Community by fulfilling the *mizvot* and participating in Jewish life. Indeed, the CCAR's position is even more stringent than the halakhah which confers automatic Jewishness if the mother is Jewish, regardless of the child's personal expressions and commitments. In this manner will the continuity of our people be assured.

Americans "See Something of Themselves"

Israel in the Mind of America. By PETER GROSE. New York. Alfred A. Knopf, 1983. xiv + 361 pp., \$17.95.

Reviewed by HENRY SIEGMAN

ISRAEL has enjoyed a deep reservoir of friendship and sympathy in America, a reservoir that, over the years, we have translated into economic, military and political support of truly extraordinary magnitude. We have been able to do so, not because of our great skills, although they are considerable, but because of Israel itself and its hold on the imagination of America. The reason for American friendship and support is not to be found in agreement by Americans with all of Israel's policies — although, to be sure, consistent disagreement would, in time, take a heavy toll. Nor is it to be found in the notion that Israel is critically important to America's strategic interests — although, again, that is a notion that does not hurt.

Rather, that sympathy and friendship are shaped by a perception of fundamental affinities — moral, cultural and political; by a sense of being alike, of shared values and shared aspirations. Americans who look at Israel have not found it difficult to identify with its travails and its accomplishments, with its victories no less than with its defeats.

By contrast, when Americans look at the surrounding Arab societies, they do not generally experience a similar sense of empathy and "aliqueness." To the contrary; these societies, their cultures and their values, evoke a sense of strangeness, of otherness, in most Americans. It is a reaction that clearly cannot help but be aggravated by the resurgence of Islamic fundamentalism and Khomeinism.

The case for this fundamental affinity between the American and the Israeli experience is stated with particular eloquence in the penultimate paragraph of Peter Grose's book, *Israel in the Mind of America*.

Something more than the *realpolitik* of the day has long defined America's awareness of Israel. For all the high hopes that were bound to be dashed, the wishful thinking which no reality could ever embody, Israel has succeeded in its primary mission: providing a home and a refuge for those of its people in need. American diplomacy has consistently honored that success.

Americans who are willing to look, see something of themselves in Israel. Even as they go their own way in pursuit of their own national interests, Americans and Israelis are bound together like no two other sovereign peoples.

If this is true, it is a truth that holds certain lessons for how we go about maintaining and enhancing American support for Israel. For one thing, our objective need not be to persuade our fellow Americans to accept and endorse every nuance of Israel's foreign policy; America's friendship is not the consequence of such immaculate accord, for Americans do not believe their *own* government is always in the right. Rather, it is sufficient — indeed, it is far more important — to buttress the American perception of the basic decency and attractiveness of Israeli society, and to concede that, like other basically decent societies, it is occasionally capable of errors of judgment when under stress. The notion, which too often comes through our efforts on behalf of Israel, that its policies are never mistaken and that its every decision requires unquestioning support is not only unnecessary, it accomplishes the opposite of what is intended. It is a jealousy that makes more for alienation than for admiration.

Let me cite as an example the manner in which we dealt with the

tragedy of Sabra and Shatillah. The initial statement that was issued by the Israeli cabinet was one of incredible defensiveness, ceding absolutely nothing. To the contrary, it was the rest of the world that was accused of a "blood libel" against Israel. That same defensiveness — although thankfully without the blood libel theme — characterized virtually every statement by the presidents of Jewish organizations, duly reported in *The New York Times*. I argued at the time, and have had no reason to change my mind since, that the virtually uniform repression in these official statements of genuine sentiments of anger and anguish over the negligence that permitted the massacre was not only un-Jewish, but backfired on pragmatic ground. The defensiveness of Begin and of official American Jewish pronouncements came across, not as resistance to the anti-Semite — an unwillingness to give him even an inch — which, in fact, is what motivated this defensiveness, but as callousness to great tragedy and suffering. Ironically, it is this perceived insensitivity that is precisely the stuff that anti-Semites take advantage of.

On the other hand, the spontaneous expression of shame and anger at their own government expressed by nearly 400,000 Israelis on the streets of Tel Aviv were celebrated in this country as evidence of the exceptional compassion and moral responsibility of Israeli society. The demonstration was cited by President Reagan and by friends of Israel all over this country as vindication of America's special friendship and commitment to Israel.

Americans responded to that spontaneous admission of fallability just as they responded to the integrity of the Kahane Commission, and the extraordinary experience of the prime minister of Israel

sitting before his peers and answering to them for his every thought and deed, without invoking executive privilege. This told Americans far more about the true nature of Israeli democracy and its moral values than all of the bellicose-to-defensive pronouncements issued by the Israeli Cabinet and the American Jewish establishment.

The practical consequences of this view are that we should become less hysterical and more relaxed in our political style. America's continued friendship and support of Israel will not be determined by the uncompromising character of our political rhetoric, as important as our political activities undoubtedly are. Even so abrasive a difference as the one that existed over the sale of AWACs to Saudi Arabia did not provoke a lasting breach in that friendship. Far more important are those activities which reinforce that sense of kinship and shared values between our two societies. That has less to do with the exigencies of daily political developments, which Americans tend to take in their stride, than with the abiding forces that determine the cultural and moral texture of a society, a society in which Americans find so close a resonance of their own moral and cultural sensibilities.

None of this is intended to minimize the importance of the work we must do with Congress and with the Administration. It is intended to suggest that the success of that work rests ultimately on how well we sustain these spiritual links, which, in the words of Peter Grose, enable Americans who look at Israel to "see something of themselves."

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On Ben-Gurion's Tenth Yahrzeit

Ben-Gurion. Prophet of Fire. By DAN KURZMAN. New York. Simon and Schuster, 1983. 544 pp.

Reviewed by HERBERT A. YOSKOWITZ

IT WAS 1947, a propitious time to rush forward the Palestine partition scheme at the United Nations. About a half year later, the timing had been right to move forward into Jewish statehood. According to Paul Johnson, if the vote in the General Assembly had come a year later, after the Cold War really got into its stride, President Truman would not have been able to resist the anti-Zionist pressures. American backing for Israel in 1947-48, he says, was "the last idealistic luxury the Americans permitted themselves before the real-politik of global confrontation descended. The same time-scale influenced Russia."¹ Making bold decisions at the most opportune times, as they were necessary for the beginning of modern Jewish Statehood and its continuation, is all to the credit of the subject of this biography.

Ben-Gurion, as chairman of the Jewish Agency Executive, influenced his fellow Jews to press for partition and for the declaration of a Jewish State at a time when much controversy existed about the timing of these steps. In addition, he made a decision that saved the day for the fledgling Jewish State. In April, 1948, one month before the State was declared, he ordered a pre-emptive strike against the Arabs. With this strike, Israeli power increased steadily. The very small army had become, by December, 1948, a properly equipped one of 100,000 and established a military ascendancy that it retains to this very day. Kurzman gives us this view of Ben-Gurion, the expert at "timing" . . . and other views of the man, too.

In this biography, which was published at the time of the tenth yahrzeit, the author presents his subject as a man of contradictions. How ironic it is that Ben-Gurion — a very contentious man as Kurzman points out time and time again — came to symbolize the unity of the Jewish people. How contradictory it is that Ben-Gurion, an avowed agnostic, frequently quoted the Bible and forged the political coalition between labor and religious Zionism, the coalition which became the basis for the Israeli political system until 1977. It was Ben-Gurion, the dreamer of Jewish sovereignty, who quarreled with the Zionist leadership and called for the dissolution of the Zionist movement after the State of Israel had been established. He was the most charismatic leader of Israel's largest labor party, yet he was thrown out of it a few years before his death. It was Ben-Gurion — the much glorified military leader — who urged the Israeli leadership of 1967 not to engage in war with Egypt. The complexity of the man was responsible for his unique blend of aggressive rhetoric and extremely cautious politics.

In this work, we are reminded of how improbable the Zionist dream was. David Green (Ben-Gurion's name before he changed it in 1910), grew up in Plonsk, Poland and dreamt of an independent Jewish State in the land known as Palestine. He convinced his friends to join him in that dream, which revolutionized Jewish existence.

Ben-Gurion led a revolt against Jewish tradition, concentrating on political power at a time when the emphasis was on Jewish learning. Coolly, he identified the power structures active in the international arena, and studied the changing diplomatic and strategic forces of the Great Powers. Without a reading of that scene, he believed, Zionism would find itself

isolated and pitted against ruthless antagonists stronger than those who supported it. Thus, Zionism was a revolt against the continuity of Jewish history. Others had expressed this view before Ben-Gurion but no one had done it in as pronounced a way.

As Kurzman relates, Jewish power began to take hold quickly. After the massacre of Jews at Tel Hai, Rachel Yanait Ben-Zvi "demanded that Jews form an underground army immediately from Hashomer veterans, former legionnaires and other young people." Ben-Gurion helped to place the founder of the Jewish Legion, Vladimir Jabotinsky, in command (p. 138). Thus was born the Haganah. Shortly thereafter, in December, 1921, Ben-Gurion's teenage vision of a great state-building labor army became reality when most Jewish workers joined hands in a capitalized general federation of people's workers in Israel known as the Histadrut.

The author captures Ben-Gurion's brilliance when he compares him to Berl Katzenelson, the labor party's chief theoretician.

Berl ideally complemented Ben-Gurion, the chief practitioner. With his disciplined mind, he knew more than he understood, while Ben-Gurion, with his uncanny intuition, understood more than he knew (p. 169).

Or, as Kurzman writes in another chapter, "Few of Ben-Gurion's comrades had thought that far ahead" (p. 218). No Jewish leader in the land of Israel at that time was as capable in seeing not only the day after, but the day after that as well.

Kurzman clearly believes that Ben-Gurion was the person most responsible for Israel's rebirth and for its survival. However, he points to Ben-Gurion's errors as well. In comparing him to Chaim Arlosoroff, the Secretary of the Jewish

Agency, Kurzman writes that, unlike Arlosoroff, who comprehended the situation of Jews in Germany in 1933, "Ben-Gurion did not understand the situation as well." He quotes Ben-Gurion's July 9, 1933 letter to his Mapai Party:

If the situation in Germany offers us new groups of volunteers, fine, but I view Zionism in its totality: The Jews of [Eastern Europe], and especially the youth, are as important as the German youth. They must be saved no less rapidly than the Jews of Germany (p. 182).

During the early years of World War I, Ben-Gurion was so committed to the idea that Turkey would defeat Britain in battle that he was prepared to send a Jewish force to Palestine to fight against the British (p. 121). In many instances, his personal animosities influenced his public policy. Kurzman intimates that this was the case in the sinking of the *Altalena*, a ship loaded with ammunition that might have enabled the Jews to secure East Jerusalem. Ben-Gurion's hatred of Menachem Begin, the Commander of that vessel, may have caused the Jews to lose weapons and territory. In his later years, Ben-Gurion became obsessed with an intelligence scandal known as the "Lavon Affair," which he refused to drop even after the Israeli public had lost interest in it. This stance cost him any influence he might have had after his retirement to Kibbutz Sde Boker. Thus, Kurzman summarizes Ben-Gurion's vision in the following way. "His vision was wide regarding Eretz Yisrael, but was narrow regarding other places in the world" (p. 220).

Ben-Gurion's errors are not presented, in terms of denigrating the man and his accomplishments. Throughout the biography, Kurzman acknowledges that Ben-Gurion was the architect of the State of Israel and of the Histadrut

Labor Federation. He is given credit for the military strategy that defeated the Arab onslaught in 1948. But Kurzman's work shows more dimensions of Ben-Gurion than have ever been previously presented.

Time and again the author illustrates how often Ben-Gurion referred to the Bible to support a particular point of view. He believed that God did not choose Israel but that Israel chose God. He referred to Joshua 24:22 to support his contention — "And Joshua said unto the people: you are the witness against yourselves that you have chosen the Lord to serve Him" (p. 28). In a 1953 Farewell Address to the Nation of Israel, he said:

With complete sincerity I can repeat literally the words of the Psalmist in the first verse of Chapter 131: "Lord, my heart is not haughty nor my eyes lofty; neither do I exercise myself in great matters or in things too high for me" (p. 362).

In a letter to a friend who, according to Kurzman, was Ben-Gurion's love throughout his life, he reflected on his dream in the following way:

There is hope here, Rachel, that peace is approaching, not quickly but slowly, slowly and . . . it appears to me that by the end of this century the prophecy of Isaiah will be fulfilled (p. 459).

A man of vision, Ben-Gurion dreamed dreams.

His dream was of a Jewish state created in Palestine that would be independent of donations from abroad and dependent only on Jewish labor. He believed that there was no political power without economic power. This meant that without a Jewish economy there could not be a Jewish State. He had to contend with the transition to physical labor in Palestine

that could prove to be even more difficult than the very act of immigration. Yet Ben-Gurion was able to see movement towards the realization of this dream.

Another dream was to see Israel being "a light unto the nations." Physical discomfort should not interfere with building a land that would be ethically just and morally concerned. When he saw one of his dreams played out at Lydda Airport — today known as Ben-Gurion Airport — he marveled at the hundreds of Jewish immigrants who left their planes and kissed the earth. Here was the in-gathering of the exiles about which the prophets had spoken. Did they know, he wondered, that the ground being kissed would be the ground that they would sleep on, in windy tents and in makeshift camps? He knew. For he had slept on floors as a Jewish laborer in Palestine when it was a Turkish colony forty years earlier. If he could survive, they could, too. Idealism should not be interrupted by any physical discomfort.

There are other interesting sidelights in this biography. One is Ben-Gurion's lack of a sense of humor. His son-in-law, Emanuel, said to him:

The day after the last election when you were returned to the Prime Ministership, Begin's wife packed a bag and Begin asked her where she was going. "To Ben-Gurion's," she replied. "You promised me that after the election I would be sleeping with the Prime Minister." Ben-Gurion unsmilingly pondered the joke. "I don't believe Begin made such a promise. I don't like him but he is a gentleman."

There are also some minor errors. Kurzman refers to Ben-Gurion's guide in the post World War II Displaced Persons Camps, as Rabbi Judah Nadich "of the Haganah" (p. 163). Nadich, in a letter to *Moment Magazine* writes that

he was "a deputy to the Theater Chaplain responsible for assigning Jewish chaplains in Europe to their posts."² In addition, Kurzman states that Ben-Gurion could overlook the past because, "to a prophet, only the future really counted" (p. 366). However, just a glance at Jeremiah 2:2, amongst many other prophetic sources, indicates that the prophets often look to the past and do not overlook it.

These minor errors aside, Kurzman's account of Ben-Gurion

revolves not only around the man but on the debate over what kind of nation Israel will be. A fine account of Ben-Gurion has been rendered.

1. Paul Johnson, *Modern Times. The World from the Twenties to the Eighties* (New York: Harper and Row, 1983), p. 185.

2. "Letters to The Editor," Dec. 9, 1983, p. 4.

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Like the Psalmist

GARY PACERNICK

I sang in the wilderness
Of my woman's hair
Like the psalmist
Who wept over Zion
Crying out to his God
Whose voice rang out
For all the world to hear
Oh dust water and fire
This is my gift to you

GARY PACERNICK teaches in the English department of Wright State University, Dayton, Ohio.

BOOKS RECEIVED

September and October 1984

Listing of a book does not preclude its being reviewed in a subsequent issue of JUDAISM

Autobiography and Biography

- Böll, Heinrich. *What's to Become of the Boy? or: Something to Do With Books*. New York: Alfred A. Knopf, 1984. 82 pp., \$11.95.
- Durst, Mose. *To Bigotry No Sanction*. Reverend Sun Myung Moon and the Unification Church. Chicago: Regency Gateway, 1984. 181 pp., \$6.95 (paper).
- Gordon, Haim and Jochanan Bloch, eds. *Martin Buber. A Centenary Volume*. New York: KTAV Publishing House, Inc., 1984. xvii + 493 pp., \$39.50.
- Klein, Gerda Weissman. *A Passion for Sharing. The Life of Edith Rosenwald Stern*. Chappaqua, N.Y.: Rossel Books, 1984. xi + 301 pp., \$18.95.
- Radosh, Ronald and Joyce Milton, *The Rosenberg File. A Search for Truth*. New York: Vintage Books, 1984. xxv + 617 pp., \$8.95 (paper).
- Reichel, Aaron I. *The Maverick Rabbi*. Norfolk, Va.: The Donning Co. Publishers, 1984. 361 pp., \$12.95.
- Singer, Isaac Bashevis. *Love and Exile*. New York: Doubleday and Co., Inc., 1984. 352 pp., \$17.95.
- Solomon, Flora and Barnet Litvinoff. *A Woman's Way*. New York: Simon & Schuster, 1984. 240 pp., \$12.95.
- Tec, Nechama. *Dry Tears. The Story of a Lost Childhood*. New York: Oxford University Press, 1984. 242 pp., \$6.95 (paper).
- Umansky, Ellen. *Lily Montagu and the Advancement of Liberal Judaism: From Vision to Vocation*. New York and Toronto: The Edwin Mellen Press, 1984. xvii + 283 pp., \$39.95.
- Wexler, Alice, *Emma Goldman. An Intimate Life*. New York: Pantheon Books, 1984. xix + 339 pp., \$19.95.

Bible and Midrash

- Basser, Herbert W. *Midrashic Interpretations of the Song of Moses*. New York: Peter Lang Pubs. Inc., 1984. ix + 314 pp., \$28.85 (paper).
- Steinsaltz, Adin. *Biblical Images. Men and Women of the Book*. New York: Basic Books, Inc., 1984. xvi + 230 pp., \$16.95.

Comparative Religion

- Gardner, John and John Maier. *Gilgamesh*. New York: Alfred A. Knopf, 1984. 304 pp., \$18.95.
- Mossner, Franz, *Tractate on the Jews. The Significance of Judaism for Christian Faith*. Philadelphia: Fortress Press, 1984. xii + 339 pp., \$29.95.

Contemporary Judaism

- Frankel, Jonathan, ed. *Studies in Contemporary Jewry*, Vol. I. Bloomington, Ind.: University of Indiana Press, 1984. xv + 585 pp., \$22.50.
- Neusner, Jacob. *The Jewish War Against the Jews*. Reflections on Golah, Shoah and Torah. New York: KTAV Publishing House, Inc., 1984. viii + 149 pp., \$12.95.

Fiction

- Bremkamp, Gloria Howe, *Rahab*. San Francisco: Harper & Row, 1984. 224 pp., \$11.95.
- Elegant, Robert. *Mandarin*. New York: Simon and Schuster, 1984. 645 pp., \$4.50 (paper).
- Feuchtwanger, Lion. *Success*. New York: Carroll & Graf Publishers, Inc., 780 pp., \$10.95 (paper).
- Kreitman, Esther Singer. *Deborah*. New York: St. Martin's Press, 1984. 367 pp., \$13.95.
- Levinson, Norma. *The Room Upstairs*. New York: Simon and Schuster, 1984. 255 pp., \$15.95.
- Schwartz, Howard. *Rooms of the Soul*. Chappaqua, N.Y.: Rossel Books, 1984. 161 pp., \$12.95.
- Wolman, Benjamin. *The Diary of Mordekhai Ben-Yosef*. New York: Schocken Books, 1984. 139 pp., \$13.95.
- Yudkin, Leon I. *1948 and After: Aspects of Israel*. Manchester, Eng.: University of Manchester, 1984. 182 pp. (paper).

Halakhah

- Biale, Rachel. *Women & Jewish Law: An Exploration of Women's Issues in Halakhic Sources*. New York: Schocken Books, 1984. 293 pp., \$18.95.
- Peli, Pinchas H., ed. *On Repentance: In the Thought and Oral Discourses of Rabbi Joseph B. Soloveitchik*. Ramsey, N.J.: Paulist Press, 1984. viii + 320 pp., \$11.95 (paper).

Hebrew Literature

- Mintz, Alan. *Hurban*. Responses to Catastrophe in Hebrew Literature. New York: Columbia University Press, 1984. xiv + 283 pp., \$26.00.

History

- Eban, Abba. *My People*. New York: Behrman House Inc./Random House, 1984. 550 pp., \$14.95 (paper).

Holocaust

- Bierman, John. *Odyssey*. New York: Simon and Schuster, 1984. 255 pp., \$16.95.
- Engelman, Bernt. *Germany Without Jews*. New York: Bantam Books, 1984. 381 pp., \$4.95 (paper).

Pinsker, Sanford and Jack Fischel. *Holocaust Studies Annual*, Vol. I: 1983. Greenwood, Fla.: The Penkervill Publishing Co., 1984. 181 pp., \$15.00.

Wyman, David S. *The Abandonment of the Jews. America and the Holocaust*. New York: Pantheon Books, 1984. xv + 444 pp., \$19.85.

Homiletics

Darshan, David. *Shir Hama'alot L'David and Ktav Hitnazzelut L'Darshanim*. Tr. and annotated by Hayim Goren Perelmutter. New York: KTAV, 1984. 235 pp., \$20.00.

Israel

Herman, Donald L. *The Latin-American Community of Israel*. New York: Praeger Publishers, 1984. xiv + 151 pp., \$28.95.

Schiff, Ze'ev and Ehud Ya'ari. *Israel's Lebanon War*. New York: Simon and Schuster, 1984. 320 pp., \$17.95.

Schnall, David J. *Beyond the Green Line*. New York: Praeger Publishers, 1984. xii + 164 pp., \$22.95.

Language

Rosten, Leo. *Hooray for Yiddish!* New York: Simon and Schuster, 1984. 364 pp., \$6.95 (paper).

Medieval Studies

Grupper, David and David G. Klein. *The Paper Shtetl*. New York: Schocken Books, 1984. 40 pp., \$11.95 (paper).

Litman, Jacob. *The Economic Role of Jews in Medieval Poland*. The Contribution of Yitzhak Schipper. Lanham, Md.: University Press of America, 1984. xii + 306 pp., \$15.25 (paper).

Mysticism

Spector, Sheila A. *Jewish Mysticism*. An Annotated Bibliography on the Kabbalah in English. New York and London: Garland Publishing, Inc., 1984. 425 pp., \$45.00.

Passover

Bokser, Baruch M. *The Origins of the Seder*. Berkeley, Cal.: University of California Press, 1984. xix + 188 pp., \$19.95.

Philosophy

Rotenstreich, Nathan. *Jews and German Philosophy*. New York: Schocken Books, 1984. 266 pp., \$21.95.

Poetry

Cohen, Leonard. *Book of Mercy*. New York: Villard Books, 1984. 105 pp., \$9.95.

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